

12 Am. Jur. 2d Boats and Boating Summary

American Jurisprudence, Second Edition | May 2021 Update

Boats and Boating

Sonja Larsen, J.D.

[Correlation Table](#)

Summary

Scope:

This article is concerned with the law relating to pleasure boats of all kinds and types and certain other comparable small craft. It discusses federal, state, and local regulation of such boats, and the rights and liabilities connected with or growing out of their ownership and operation, including boating rights on inland lakes; nuisances; mortgages and liens; liability of motorboat owners and operators for injuries; liability for injuries to, or by, nonpower boats; liability of boat livery and resort operators for boating injuries; liability of municipal corporations for boating injuries in parks and other public places; liability of manufacturers and sellers for defects in boats; and liability of bailees for damage to boats during a bailment. In addition, the offense of boating while intoxicated is discussed.

Several federal laws regulating vessels are discussed as they are applied to pleasure boats, including provisions relating to criminal penalties for misconduct or negligent conduct of ship officers; navigation rules for harbors, rivers and inland waters; Coast Guard auxiliary vessels; reciprocal exemption of foreign yachts from charges and tonnage taxes; limitation of a vessel's owner's liability for loss, damage or injury; and ship mortgages and liens for ship repair and supply. Also, under federal law, a "recreational vessel" (as defined by [46 U.S.C.A. § 2101\(34\)](#)) is not among the categories of vessels made subject to Coast Guard inspection.

Treated Elsewhere:

Admiralty, see [Am. Jur. 2d, Admiralty §§ 1 et seq.](#)

Jones Act, recovery for injury or death of seaman under, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 29 et seq.](#)

Marine insurance policies, risks and coverage under, see [Am. Jur. 2d, Insurance §§ 637 to 645](#)

Products liability, generally, see [Am. Jur. 2d, Products Liability §§ 1 et seq.](#)

Public water supply, prohibition of boating to protect, see [Am. Jur. 2d, Waterworks and Water Companies § 33](#)

Salvage, see [Am. Jur. 2d, Salvage §§ 1 et seq.](#)

Taxation by state or municipality of business of shipping or carriage by water, see [Am. Jur. 2d, State and Local Taxation §§ 337 to 339](#)

Transportation of persons or property by ships or vessels, see [Am. Jur. 2d, Shipping §§ 1 et seq.](#)

Waters, watercourses, bodies and accumulations of water, and water rights, see [Am. Jur. 2d, Waters §§ 1 et seq.](#)

Wharves, piers, and docks, see [Am. Jur. 2d, Wharves §§ 1 et seq.](#)

Zoning laws pertinent to boathouses, boat trailers, boatyards, and marinas, see [Am. Jur. 2d, Zoning and Planning §§ 1 et seq.](#)

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A.L.R. Index, Jet Skis

A.L.R. Index, Pleasure Boats

A.L.R. Index, Yachts

West's A.L.R. Digest, [Shipping](#) , 1, 3, 3.5

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12 Am. Jur. 2d Boats and Boating § 1

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Boats and Boating

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I. In General

§ 1. Vessels and boats, generally; definitions and distinctions

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West's Key Number Digest

West's Key Number Digest, [Shipping](#)  1, 3, 3.5

Trial Strategy

[Motorboat Propeller Injury Accidents](#), 41 Am. Jur. Trials 161

[Motorboat Accident Litigation](#), 7 Am. Jur. Trials 1

Boats within the scope of this article are largely confined to pleasure craft of various kinds and types, including not only craft falling within the commonly accepted connotation of the term “motorboat,” such as speedboats, runabouts, cabin cruisers, and outboards, but also steam yachts, sailing yachts or sailboats (with or without auxiliary engines), rowboats, and canoes. For some purposes, a motorboat or motor yacht may in a broader sense be a “vessel,” as, for instance, for the purpose of limiting the owner's liability for injuries or damage resulting from a collision to the value of the owner's interest in the boat, pursuant to a federal statute that applies to “seagoing vessels” and “vessels used on lakes or rivers or in inland navigation,”¹ or for the purpose of assessing a personal property tax under a statute referring to “ships and vessels.”²

Motorboats are “vessels” within the meaning of a federal statute that requires the numbering of “an undocumented vessel equipped with propulsion machinery of any kind.”³ “Vessel” is broadly defined to include every description of water craft or other artificial contrivance used, or capable of being used as a means of transportation on water.⁴ However, under federal law, a “recreational vessel”⁵ is not among the categories of vessels made subject to Coast Guard inspection.⁶

A "sailboard" or "windsurfer" is not a "vessel" within the meaning of a state law that requires personal flotation devices.⁷ A "jet ski," however, is a "vessel" covered by a federal law concerning limitations on liability,⁸ and for purposes of admiralty jurisdiction.⁹

The word "vessel" is broadly defined under the general provisions of the federal statutes dealing with rules of construction as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."¹⁰ Something may be a "vessel" under the Rules of Construction Act¹¹ even if its primary purpose is not transportation, as long as its use as a means of transportation remains a practical possibility, not merely a theoretical one.¹² A court must determine whether a reasonable observer, looking to the structure's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.¹³ Thus, a floating home that has no rudder or steering mechanism, that has an unraked hull, and that is incapable of self-propulsion, and whose rooms look out upon the world not through watertight portholes, but through French doors or ordinary windows, is not designed to any practical degree to transport persons or things over water, and thus does not qualify as a "vessel."¹⁴

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Footnotes

- 1 For a discussion of this federal statute, entitled the "Shipowners Limitation of Liability Act," see [Am. Jur. 2d, Shipping §§ 369 to 420](#).
 - 2 As to vessels within the coverage of the Act, see [Am. Jur. 2d, Shipping § 378](#).
 - 3 [Barker v. Inhabitants of Town of Fairhaven](#), 265 Mass. 333, 163 N.E. 901 (1928) (involving a 71-foot motor pleasure yacht).
 - 4 46 U.S.C.A. § 12301.
 - 5 [Kayfetz v. Walker](#), 404 F. Supp. 75 (D. Conn. 1975).
 - 6 As defined by 46 U.S.C.A. § 2101(34).
 - 7 Pursuant to 46 U.S.C.A. § 3301.
 - 8 [People v. Heiple](#), 133 Ill. App. 3d 583, 88 Ill. Dec. 662, 478 N.E.2d 1388 (3d Dist. 1985); [People v. King](#), 151 Mich. App. 723, 391 N.W.2d 462 (1986).
 - 9 [Keys Jet Ski, Inc. v. Kays](#), 893 F.2d 1225 (11th Cir. 1990).
 - 10 [Choat v. Kawasaki Motors Corp.](#), 675 So. 2d 879 (Ala. 1996).
 - 11 As to liability concerning jet skiing, generally, see § 50.
 - 12 1 U.S.C.A. § 3.
 - 13 1 U.S.C.A. § 3.
 - 14 [BW Offshore USA, LLC v. TVT Offshore AS](#), 145 F. Supp. 3d 658 (E.D. La. 2015).
- In deciding whether a watercraft is a "vessel," subject to maritime liens and the district court's admiralty jurisdiction, the focus is the craft's capability, not its present use or station; the dispositive question is whether the watercraft's use as a means of transportation on water is a practical possibility or merely a theoretical one. [Crimson Yachts v. Betty Lyn II Motor Yacht](#), 603 F.3d 864 (11th Cir. 2010).
- 13 [Martin v. Fab-Con, Inc.](#), 9 F. Supp. 3d 642 (E.D. La. 2014).
 - 14 [Lozman v. City of Riviera Beach, Fla.](#), 568 U.S. 115, 133 S. Ct. 735, 184 L. Ed. 2d 604 (2013).

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12 Am. Jur. 2d Boats and Boating § 2

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Boats and Boating

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I. In General

§ 2. Rights of pleasure boats on navigable waters; relative rights of small and large craft

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West's Key Number Digest

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Trial Strategy

[Negligent Operation of Pleasure Boat, 43 Am. Jur. Proof of Facts 2d 395](#)

[Liability for Negligent Operation of Ski Boat, 36 Am. Jur. Proof of Facts 2d 525](#)

Navigation for pleasure and recreation is as important in the eyes of the law as navigation for a commercial purpose,¹ and public use of public navigable waters comprehends not only navigation by watercraft for commercial purposes, but also use for ordinary purposes of life such as boating.² Moreover, the exercise and enjoyment of the right to navigate navigable or public waters is as much guaranteed to small craft as to a large ship.³

Although the relative size and maneuverability of vessels may be considered when assigning fault for a collision,⁴ a supersized vessel may not insolently disregard smaller vessels.⁵ Indeed, although the exigencies of commerce in many respects subordinate the rights of small craft to the movements of a steamer, the more powerful vessel must exercise extraordinary care and watchfulness when surrounded by feebler craft.⁶

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Footnotes

- 1 Mentor Harbor Yachting Club v. Mentor Lagoons, Inc., 170 Ohio St. 193, 10 Ohio Op. 2d 131, 163 N.E.2d
373 (1959).
- 2 Nelson v. De Long, 213 Minn. 425, 7 N.W.2d 342 (1942).
- As to what are navigable or public waters, generally, see Am. Jur. 2d, Waters § 136.
- 3 Daniels v. Carney, 148 Ala. 81, 42 So. 452 (1906); Monongahela River Consol. Coal & Coke Co. v.
Lancaster's Adm'r, 169 Ky. 24, 183 S.W. 258 (1916).
- 4 Fischer v. Camden & P. Steam-Boat Ferry Co., 124 Pa. 154, 16 A. 634 (1889) (collision between steam
ferry and rowboat).
- As to collisions between a motorboat and a larger vessel, see §§ 3, 43, 44.
- 5 Wilson v. Pacific Mail S.S. Co., 276 U.S. 454, 48 S. Ct. 369, 72 L. Ed. 651 (1928) (collision between
steamer and schooner); Lewis v. Jones, 27 F.2d 72 (C.C.A. 4th Cir. 1928) (collision between Chinese junk
and anchored rowboat).
- 6 Horst v. Columbia Contract Co., 89 Or. 344, 174 P. 161 (1918) (collision between fishing boat and
steamboat).

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I. In General

§ 3. Rights of pleasure boats on navigable waters; relative rights of small and large craft—Displacement waves and swells

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A larger vessel causing a wake or swell must exercise due care for the safety of smaller boats traversing inland waters,¹ and where the displacement waves from the larger vessel are sufficient to swamp or capsize a smaller boat, thereby endangering the lives of its occupants, the operators of the larger vessel are obliged to avoid the danger by ceasing normal operation until the smaller boat has passed outside the danger zone.²

Smaller craft have the right to assume larger craft aware of their presence will observe reasonable precautions and are under no duty to warn the larger vessel of the danger.³ However, it is the duty of the operator of an outboard motorboat, on account of its mobility, to avoid the danger of waves created by a tug pushing a barge if the danger is discovered in time, although when the danger is apprehended too late to avoid it, the motorboat operator who does the most practical thing by heading into the waves is not contributorily negligent so as to bar recovery for the operator's death resulting when the motorboat capsized from the waves.⁴

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Footnotes

¹ [Moran v. The Georgie May](#), 164 F. Supp. 881 (S.D. Fla. 1958).

² [Daniels v. Carney](#), 148 Ala. 81, 42 So. 452 (1906).

The rule that a boat operator who sees, or should see, another boat, whether moored or navigating, in a position where damage to such other boat from the swell or wave wash from the first boat is foreseeable, must reduce speed and direct its course away from the other boat, has been recognized as applicable in an action for the death by drowning of the occupant of a 14-foot aluminum craft powered by a 10- or 12-horsepower outboard motor when it was allegedly swamped by a 16-foot runabout powered by two 35-horsepower outboard motors. [Byrd v. Belcher](#), 203 F. Supp. 645 (E.D. Tenn. 1962).

³ [Moran v. The Georgie May](#), 164 F. Supp. 881 (S.D. Fla. 1958).

4 [Tolle v. Higgins Industries, 212 La. 173, 31 So. 2d 730 \(1947\).](#)

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II. Public Regulation and Control

A. In General

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II. Public Regulation and Control

A. In General

§ 4. Federal regulation of boats, generally

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Forms

Forms relating to the Coast Guard, generally, see Am. Jur. Pleading and Practice Forms, Boats and Boating [[Westlaw® Search Query](#)]

Pleasure craft, depending upon their size, type, and place of navigation, are variously governed by a number of federal statutes which apply generally to all vessels of the United States. Such statutes include navigation rules for harbors, rivers, and inland waters.¹ Special statutes have also been passed for the regulation of “motorboats,”² and for their numbering by the proper issuing authority in their states.³ In addition, the Secretary of the department in which the Coast Guard is operating has the power to issue safety regulations and standards.⁴ However, when there is no federal requirement that manufacturers install a particular safety device, manufacturers are given the choice whether to do so.⁵

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Footnotes

- ¹ [33 U.S.C.A. §§ 2071, 2072](#).
Recreational boat owners' claim that imposition of fees on recreational boaters, but not commercial boaters, violates equal protection clause is summarily dismissed, where Coast Guard set fees at maximum allowable rate, based on its comparison of costs of services with anticipated revenue generated by fees, because Coast

Guard's calculation was reasonable, even if it included costs of services to commercial boats in recreational fees, and distinction between commercial and recreational boats is not arbitrary, but may be based on differing roles of commercial and recreational boats in economy. [Boat Owners Ass'n of U.S. \(BOAT/U.S.\) v. U.S.](#), 834 F. Supp. 7 (D.D.C. 1993).

2 As to statutory definitions, see § 1.

3 § 25.

4 46 U.S.C.A. § 4302.

5 [Edwards v. Murray Chris-Craft Sportboats, Inc.](#), 873 F. Supp. 618 (M.D. Fla. 1994) (concerning flotation devices).

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A. In General

§ 5. Federal regulation of boats, generally—Tariff laws

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Customs officers are authorized by federal statute to board “any vessel” at any place in the United States or within customs-enforcement or other areas, to examine the vessel's manifest and other papers, to search the vessel or cargo, and to this end to hail and stop the vessel and use all necessary force to compel compliance.¹ Officers of the Treasury Department or other persons authorized by the department are also statutorily empowered to hail, stop, and board “any vessel” in the enforcement of the navigation laws, and to arrest any person violating those laws.² Factors that support a customs search without suspicion in territorial waters, i.e., substantial rational interests, necessity, decreased expectations of privacy, and moral neutrality, also permit customs searches within the contiguous zone when less than reasonable suspicion exists.³ However, the degree of privacy one may reasonably expect varies according to the vessel one is aboard; thus a houseboat or small pleasure craft incapable of ocean travel does not ordinarily provoke the concern of customs violations, so sailors on board should not normally expect investigations by Customs officers and their reasonable expectation of privacy is greater than the degree of privacy enjoyed by sailors on board large fishing boats or yachts that are capable of ocean travel and which, in the area involved, commonly carry illicit cargo.⁴ A search based solely on this statutory authorization is unreasonable if it sweeps more broadly than the Fourth Amendment allows, and thus in the absence of probable cause or consent, it is unreasonable unless it falls within an exception to the constitutional bar on unreasonable searches and seizures, such as the “border search” exception.⁵

Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade nor violating the reporting requirements for arriving vessels or the customs or navigation laws, and not having visited any hovering vessel, are not required to make entry at the customhouse, although the master of, or any other person on board, any such vessel which has on board any article required by law to be entered must report such article to the Customs Service immediately upon arrival.⁶ Certain foreign yachts that are pleasure vessels are exempted from clearing at the customhouse.⁷ A vessel for which a recreational endorsement is issued may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Secretary of Homeland Security. However, recreational

vessels must comply with all customs requirements for reporting arrivals, and individuals on such vessels shall be subject to all applicable customs regulations.⁸

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Footnotes

- 1 [19 U.S.C.A. § 1581\(a\)](#).
The Coast Guard's stop of a sailboat suspected of involvement on smuggling marijuana may be justified as a stop for the limited purpose of inspecting the vessel's documentation. [U.S. v. Dobson](#), 781 F.2d 1374 (9th Cir. 1986).
- 2 [19 U.S.C.A. § 1581\(b\)](#).
- 3 [U.S. v. Williams](#), 544 F.2d 807 (5th Cir. 1977).
- 4 [U.S. v. Gollwitzer](#), 697 F.2d 1357 (11th Cir. 1983).
- 5 [U.S. v. Stanley](#), 545 F.2d 661 (9th Cir. 1976).
- 6 [19 U.S.C.A. § 1441\(4\)](#).
A “hovering vessel” is defined in substance as a vessel off the United States coast reasonably suspected of being used to introduce merchandise into the country in violation of United States laws. [19 U.S.C.A. § 1401\(k\)](#).
- 7 [§ 23](#).
- 8 [46 U.S.C.A. § 12114\(c\)](#).

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A. In General

§ 6. Federal regulation of boats, generally—Preemption of state laws

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The Federal Boat Safety Act (FBSA)¹ gives the Coast Guard exclusive responsibility for establishing safety regulations and provides that all state laws and regulations purporting to establish safety standards for recreational boats that are not identical to federal regulations promulgated thereunder are invalid.² Preemption may be found if to allow damages for failure to incorporate a safety device would be to establish, continue in effect, or enforce a law or regulation imposing a performance or safety standard that is not identical to the regulation prescribed by the Coast Guard pursuant to the statute.³ Thus, a state common-law action against the manufacturer of a boat based on the failure of the manufacturer to incorporate positive flotation in the design of a recreational boat which is more than 20 feet in length is preempted under the Supremacy Clause by regulations under the Federal Boat Safety Act (FBSA), which impose flotation requirements on recreational boats less than 20 feet in length but not on those which are 20 feet in length or more.⁴

However, the FBSA statute does not require the Coast Guard to promulgate comprehensive regulations covering every aspect of recreational boat safety and design or to certify the acceptability of every boat subject to its jurisdiction. Furthermore, the statute does not convey a clear and manifest intent to completely occupy the field of safety regulation of recreational boats as to foreclose state common-law remedies. Finally, the goal of fostering uniformity in manufacturing regulations will not justify the displacement of state common-law remedies that compensate accident victims and their families and serve to promote boating safety.⁵

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Footnotes

¹ 46 U.S.C.A. §§ 4301 to 4311.

- 2 [Edwards v. Murray Chris-Craft Sportboats, Inc., 873 F. Supp. 618 \(M.D. Fla. 1994\).](#)
- 3 [Edwards v. Murray Chris-Craft Sportboats, Inc., 873 F. Supp. 618 \(M.D. Fla. 1994\).](#)
- 4 [Edwards v. Murray Chris-Craft Sportboats, Inc., 873 F. Supp. 618 \(M.D. Fla. 1994\).](#)
- 5 [Sprietsma v. Mercury Marine, a Div. of Brunswick Corp., 537 U.S. 51, 123 S. Ct. 518, 154 L. Ed. 2d 466 \(2002\)](#) (no implicit preemption of common-law tort claims arising out of the failure to install propeller guards on motorboat engines).

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II. Public Regulation and Control

A. In General

§ 7. State and local regulation of boats and personal watercraft, generally

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[Validity, Construction, and Application of State Statutes and Local Ordinances Governing Personal Watercraft Use](#), 118 A.L.R.5th 347

Trial Strategy

[Negligent Operation of Pleasure Boat](#), 43 Am. Jur. Proof of Facts 2d 395
[Liability for Negligent Operation of Ski Boat](#), 36 Am. Jur. Proof of Facts 2d 525

A local navigation custom will be recognized only if it does not conflict with the statutory rules of navigation.¹ Accordingly, many states and their political subdivisions have enacted statutes or regulations that expressly govern pleasure craft on the navigable waters of the state, with respect to such matters such as operation,² and licensing and numbering.³

A state administrative agency may also be authorized by statute to regulate the operation of pleasure craft upon certain state waters,⁴ but these rules and regulations may be void under certain circumstances as unconstitutional delegations of legislative power.⁵ They may also be void for vagueness⁶ or deemed to be overbroad.⁷

In addition, many counties and municipalities have regulated the operation of vessels generally or pleasure craft in particular upon waters within those political subdivisions.⁸ These local laws must be within the grant of power from the state,⁹ and in some circumstances may conflict with state statutes,¹⁰ or violate equal protection.¹¹

In addition, the enforcement of such laws may be found unreasonable in a particular instance even if the laws are not unconstitutional per se and constituting a reasonable exercise of the municipality's granted power.¹² Furthermore, such laws are illegal and unenforceable even though not unconstitutional, if they exceed the power granted to the municipality by the state.¹³

A state, a county, and a city may be immune from liability, under a statute providing that a public entity was not liable for injury caused by adopting or failing to adopt an enactment, for failing to take any safety measures via the adoption of local ordinances regarding a waterway.¹⁴

A municipality has no authority to regulate a boating activity that has been preempted by the state,¹⁵ and state preemption may be implicitly expressed through a negative implication.¹⁶ Thus, a municipality lacks the power to regulate a boating activity that is not peculiarly subject to local regulation but presents a statewide problem, even though the state has not yet taken action on the issue.¹⁷

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Footnotes

- 1 [Am. Jur. 2d, Shipping § 491.](#)
- 2 [§ 17.](#)
- 3 [§§ 24, 25.](#)
- 4 [Citizens for the Preservation of Kenai River, Inc. v. Sheffield](#), 758 P.2d 624 (Alaska 1988) (regulation limiting the size of motors on boats in a state river); [Game and Fresh Water Fish Commission v. Lake Islands, Ltd.](#), 407 So. 2d 189 (Fla. 1981).
- 5 [State v. Pairan](#), 80 Ohio L. Abs. 484, 159 N.E.2d 829 (C.P. 1958).
- 6 [State v. Botsch](#), 44 Ohio App. 3d 59, 541 N.E.2d 489 (6th Dist. Ottawa County 1989) (statute prohibiting creation of wake “near” any marina, boat docking facility, etc., was unconstitutionally void).
- 7 [State v. Corley](#), 558 So. 2d 187 (Fla. 4th DCA 1990).
- 8 [Dickey v. Thornburgh](#), 82 Cal. App. 2d 723, 187 P.2d 132 (4th Dist. 1947); [People v. Bogner](#), 20 Misc. 2d 465, 189 N.Y.S.2d 777 (N.Y. City Ct. 1959).
- 9 [Miller v. Fabius Tp. Bd.](#), St. Joseph County, 366 Mich. 250, 114 N.W.2d 205 (1962); [Menzer v. Village of Elkhart Lake](#), 51 Wis. 2d 70, 186 N.W.2d 290 (1971).
As to grants of police power to municipalities by the state, generally, see [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 370 to 372.](#)
- 10 [Miller v. Fabius Tp. Bd.](#), St. Joseph County, 366 Mich. 250, 114 N.W.2d 205 (1962); [City of Stamford v. Ballard](#), 162 Tex. 22, 344 S.W.2d 861 (1961).
As to effect of conflict of municipal ordinance with state statute, generally, see [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 315 to 317.](#)
- 11 [Lopez v. Jackson County Bd. of Sup'rs](#), 375 F. Supp. 1194 (S.D. Miss. 1974).
As to constitutionality of municipal ordinances, generally, see [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 302 to 314.](#)

- 12 City of Shreveport v. Wilkinson, 182 La. 783, 162 So. 621 (1935).
13 City of Shreveport v. Case, 198 La. 702, 4 So. 2d 801 (1941).
14 Wood v. County of San Joaquin, 111 Cal. App. 4th 960, 4 Cal. Rptr. 3d 340 (3d Dist. 2003), as modified,
 (Sept. 5, 2003) (motorboat struck canoers, and thus such failure could not satisfy the “gross negligence”
 exception to statutory governmental immunity for hazardous recreational activities).
15 State ex rel. McElroy v. City of Akron, 173 Ohio St. 189, 19 Ohio Op. 2d 3, 181 N.E.2d 26 (1962) (watercraft
 licensing).
 As to municipal ordinances regulating matters also regulated by state statutes, generally, see [Am. Jur. 2d](#),
 [Municipal Corporations, Counties, and Other Political Subdivisions](#) §§ 375 to 378.
16 Village of Brooklyn Center v. Rippen, 255 Minn. 334, 96 N.W.2d 585 (1959).
17 Village of Brooklyn Center v. Rippen, 255 Minn. 334, 96 N.W.2d 585 (1959) (boat licensing).

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II. Public Regulation and Control

A. In General

§ 8. Federal assistance to state recreational boating safety programs

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To encourage greater state participation and uniformity in boating safety efforts, and particularly to permit states to assume the greater share of boating safety education, assistance and enforcement activities, the federal Secretary of Transportation is to carry out a national recreational boating safety program.¹ Guidelines and standards for the program must consider, among other things, factors affecting recreational boating safety by contributing to overcrowding and congestion of waterways, the availability and geographic distribution of recreational boating facilities in and among applying states, and state marine casualty and fatality statistics for recreational vessels.² A state whose recreational boating safety program has been approved by the Secretary is eligible for the allocation and distribution of amounts to assist that state in developing, carrying out and financing its program.³

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Footnotes

- ¹ 46 U.S.C.A. § 13102(a).
- ² 46 U.S.C.A. § 13102(b)(1).
- ³ 46 U.S.C.A. § 13102(c).

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§ 9. Enforcement of federal navigation and boating laws

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[Authority of United States officials to conduct inspection or search of American registered vessel located outside territorial waters of United States, 40 A.L.R. Fed. 402](#)

The Coast Guard is generally charged with the enforcement of the federal navigation and boating laws on and under the high seas and waters subject to federal jurisdiction,¹ and in connection therewith may make inquiries, examinations, inspections, searches, seizures, and arrests.²

Daytime boarding for the purpose of conducting a safety inspection that is made in a minimally intrusive manner, when the vessel is in a location that poses substantial risk to its occupants, is reasonable under the Fourth Amendment balancing test.³ The Coast Guard may actively search for safety equipment in various parts of a boat if the owner states that he or she could not help the boarding party locate safety equipment because the owner had only recently purchased the vessel.⁴

Observation:

Although federal law⁵ restricts the law enforcement authority of the Coast Guard to those instances in which a vessel is “subject to the jurisdiction, or to the operation of any law, of the United States,” the Coast Guard has jurisdiction to determine whether, in fact, it has jurisdiction; and, in order for the Coast Guard to determine whether it has jurisdiction, it must confirm whether the vessel is of American registry. If there is no concrete information forthcoming from the vessel as to its registry, and it becomes a genuine question of registry of vessel, the statutory grant of power permits the Coast Guard to board the vessel to confirm whether it was indeed a United States vessel.⁶

The Coast Guard has power by statute⁷ to stop and board any American flag vessel anywhere on the high seas in the complete absence of suspicion of criminal activity.⁸ However, this statutory authorization of the Coast Guard to conduct boardings of vessels for documentation and inspections⁹ is constitutionally valid under the Fourth Amendment only to the extent of limited invasions of privacy necessary to conduct an inspection.¹⁰

Merely because a vessel is of foreign registry or outside the territorial waters of the United States does not mean that it is beyond the jurisdiction of the United States, as the Coast Guard's statutory grant of power¹¹ requires the Coast Guard to have a reasonable suspicion that those aboard a vessel are conspiring to smuggle contraband into the United States.¹²

State statutes may authorize the enforcement of state boating laws by various state agencies or officials, such as a department of conservation and economic development¹³ and state law may provide for the enforcement of local boating laws by local ordinance.¹⁴

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Footnotes

- 1 14 U.S.C.A. § 102.
- 2 14 U.S.C.A. § 522.
- 3 *U.S. v. Humphrey*, 759 F.2d 743 (9th Cir. 1985).
- 4 *U.S. v. Thompson*, 928 F.2d 1060 (11th Cir. 1991).
- 5 14 U.S.C.A. § 522.
- 6 *U.S. v. Petrulla*, 457 F. Supp. 1367 (M.D. Fla. 1978).
- 7 14 U.S.C.A. § 522(a).
- 8 *U.S. v. Purvis*, 768 F.2d 1237 (11th Cir. 1985).
- 9 14 U.S.C.A. § 522(a).
- 10 *U.S. v. Demanett*, 629 F.2d 862 (3d Cir. 1980).
Although the Coast Guard's board and search of one man-sized compartment on a vessel occurred two and one-half hours after its initial board and search (the compartment had been overlooked in initial search), this was not continuation of initial board and search. The second search was supported by probable cause where officers knew vessel had been trafficking in contraband: it was traveling in area where “mother ship” smuggling operation had supposedly occurred previous day; the owner and companion gave inconsistent statements about how long they had been on vessel; the seamen discovered caulking tubes, caulking gun, and screwdriver with fresh caulking; and large, unaccounted-for spaces existed in outer pontoons. *U.S. v. Roy*, 869 F.2d 1427 (11th Cir. 1989).
- 11 14 U.S.C.A. § 522(a).

- 12 U.S. v. Padilla-Martinez, 762 F.2d 942, 19 Fed. R. Evid. Serv. 1510 (11th Cir. 1985).
13 State v. Osborn, 32 N.J. 117, 160 A.2d 42 (1960).
14 City of Stamford v. Ballard, 162 Tex. 22, 344 S.W.2d 861 (1961) (lake officer).

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§ 10. Enforcement of federal navigation and boating laws—Coast Guard auxiliary

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The Coast Guard auxiliary, a nonmilitary organization composed of motorboat and yacht owners and other qualified persons,¹ was established to assist the Coast Guard in performing its powers, duties, and role.²

Observation:

A motorboat or yacht is deemed to be a public vessel of the United States and a vessel of the Coast Guard while assigned to authorized Coast Guard duty.³

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Footnotes

- ¹ 14 U.S.C.A. § 3901.
- ² 14 U.S.C.A. § 3902.
- ³ 14 U.S.C.A. § 3908.

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A.L.R. Index, Pleasure Boats

A.L.R. Index, Yachts

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§ 11. Regulations governing vessels on inland navigable waters, generally

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The Secretary of the Department in which the Coast Guard is operating is authorized to issue inland navigation regulations applicable to all vessels upon the inland waters of the United States and technical annexes that are as consistent as possible with the respective annexes to the International Regulations.¹

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Footnotes

- ¹ [33 U.S.C.A. § 2071](#).
As to motorboats as within the definition of vessels, see [§ 1](#).

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§ 12. Requirement as to lights on boats in inland navigation

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The Inland Navigation Rules contain provisions, pertaining to lights, to be complied with from sunset to sunrise,¹ during the day in restricted visibility, and under other circumstances when necessary.² There are specific visibility rules that vary according to the size of the vessel.³

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Footnotes

- [1](#) 33 C.F.R. § 83.20(b) (Rule 20).
[2](#) 33 C.F.R. § 83.20(c) (Rule 20).
[3](#) 33 C.F.R. § 83.22 (Rule 22).

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§ 13. Requirement that vessel in inland navigation be equipped with whistles, bells, or other sound-producing devices

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Vessels of 12 meters or more in length must be provided with a whistle under the Inland Navigational Rules.¹ Vessels of 20 meters or more in length are required to be provided with a whistle and a bell.² Vessels of 100 meters or more in length shall, in addition, be provided with a gong, the tone and sound of which cannot be confused with that of the bell.³ Vessels less than 12 meters in length are not required to carry a whistle and bell, but if the vessel does not, it must be provided with some other means of making an efficient sound signal.⁴ There are also rules pertaining to the required manner of giving sound signals.⁵

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Footnotes

- ¹ 33 C.F.R. § 83.33(a) (Rule 33).
- ² 33 C.F.R. § 83.33(a) (Rule 33).
- ³ 33 C.F.R. § 83.33(a) (Rule 33).
- ⁴ 33 C.F.R. § 83.33(b) (Rule 33).
- ⁵ § 22.

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§ 14. Requirement that vessel in inland navigation be equipped with other specified equipment

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The uninspected vessels statutes¹ apply to an uninspected vessel on the navigable waters of the United States, owned in the United States and operating on the high seas, as long as the vessel is not subject to the statutes² governing uninspected commercial fishing industry vessels.³ Such an uninspected vessel propelled by machinery must be provided with fire extinguishers.⁴ Uninspected vessels also need life preservers and other lifesaving devices,⁵ carburetor flame arresters, backfire traps, or other similar device⁶ and bilge ventilators.⁷

A municipal ordinance requiring motorboats operating on a certain lake to be equipped with mufflers is illegal and unenforceable, although not unconstitutional, if the city's power over the lake, as delegated by the state legislature, is limited to enacting ordinances for the environmental protection of the water supply.⁸

Regulations governing flotation requirements promulgated by the Coast Guard under the Federal Boat Safety Act (FBSA)⁹ only require that recreational boats under 20 feet in length meet specified flotation tests, and thus manufacturers of recreational boats 20 feet or more in length have been given the choice whether to incorporate positive flotation into the design of boats.¹⁰

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Footnotes

¹ 46 U.S.C.A. §§ 4101 to 4106.

² 46 U.S.C.A. §§ 4501 to 4507.

- 3 46 U.S.C.A. § 4101.
4 46 U.S.C.A. § 4102(a).
 However, outboard motorboats while tuning up for, or engaged in, a previously arranged and announced
 race, are exempt from this fire extinguisher requirement. 46 U.S.C.A. § 4103(b).
5 46 U.S.C.A. § 4102(b).
6 46 U.S.C.A. § 4102(c).
7 46 U.S.C.A. § 4102(d).
8 City of Shreveport v. Case, 198 La. 702, 4 So. 2d 801 (1941).
9 46 U.S.C.A. §§ 4301 to 4311.
10 Edwards v. Murray Chris-Craft Sportboats, Inc., 873 F. Supp. 618 (M.D. Fla. 1994).

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1. Equipment

§ 15. Requirements as to inspection of boats

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Only the boiler, engine and other operating machinery of a recreational steam vessel of not more than 65 feet overall in length are subject to inspection under federal law.¹

State boating laws, however, may authorize a state agency to prescribe and enforce regulations for the inspection of boats.² Local ordinances may require the inspection by local officials of boats to be used on waters within the particular municipality.³

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Footnotes

- ¹ 46 U.S.C.A. § 3302(k).
- ² [Harris v. State ex rel. Oklahoma Planning & Resources Bd.](#), 1952 OK 459, 207 Okla. 589, 251 P.2d 799 (1952) (referring to statute).
- ³ [City of Stamford v. Ballard](#), 162 Tex. 22, 344 S.W.2d 861 (1961).

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1. Equipment

§ 16. National construction and safety standards for boats

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The Secretary who heads the department in which the Coast Guard is operating¹ may prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment, and establishing procedures and tests required to measure conformance with those standards.² Installation, carrying or use of associated equipment may be required,³ as well as the display of evidence that the requirements of applicable safety regulations have been met.⁴

Provision is made for the testing and inspection of recreational vessels and related equipment,⁵ and the applicable penalties and injunctions for violation of the applicable statutes.⁶

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Footnotes

- ¹ 46 U.S.C.A. § 2101(44).
- ² 46 U.S.C.A. § 4302(a)(1).
For further discussion of the recreational boat standards, see 46 U.S.C.A. §§ 4301 to 4311.
Under the Federal Boat Safety Act (46 U.S.C.A. §§ 4301 to 4311), the Coast Guard has been delegated exclusive authority to establish safety regulations. [Moore v. Brunswick Bowling & Billiards Corp., Mercury Div.](#), 853 S.W.2d 842 (Tex. App. Houston 1st Dist. 1993), writ granted, (Dec. 8, 1993) and judgment rev'd on other grounds, 889 S.W.2d 246 (Tex. 1994).
- ³ 46 U.S.C.A. § 4302(a)(2).
Unacceptable equipment may be prohibited. 46 U.S.C.A. § 4302(a)(2).
- ⁴ 46 U.S.C.A. § 4302(a)(3).

5 46 U.S.C.A. § 4303.

6 46 U.S.C.A. § 4311.

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2. Operation or Navigation

§ 17. Rules governing the operation and navigation of boats, generally

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The Inland Navigational Rules¹ prescribe certain steering and sailing rules, as well as rules governing lights and shapes, and sound and light signals, applicable to all vessels on inland waters and vessels of the United States on the Canadian waters of the Great Lakes, to the extent that there is no conflict with Canadian law; the Rules are designed to indicate exactly what two vessels approaching with risk of collision are to do to avoid each other.² There is no question but that pleasure boats are subject to these rules,³ and they have been so considered in a number of cases with respect to determining the effect of a violation of such rules by a motorboat⁴ upon civil liability for a collision. Moreover, the conduct required of a motorboat operator under such rules has been discussed with respect to determining civil liability for a collision.⁵

A city may generally prescribe “steering and sailing rules” by ordinance.⁶ For example, a city ordinance prohibiting any boat from operating at night on a lake which served as the city’s water supply, and over which the city had power delegated from the state to adopt and enforce regulations to protect the water from pollution and contamination, is not unconstitutional in itself, although its attempted enforcement is unreasonable as against a person who used a motorboat as a means of conveyance to and from their home on the lake.⁷ Village regulations requiring all boats on a certain navigable lake to use the village dock for a fee, and to refrain from anchoring in adjacent waters, are a proper exercise of the police power and comprehended within statutes authorizing villages to regulate the use of docks on navigable waters and to adopt police regulations governing village property.⁸ Also, a political subdivision of a state may charge fees for access thereto and for the use of ramps or docks, as long as such charges are not in the nature of a license or privilege of operating watercraft on such waters, under its right to say who may or may not use waters owned by the subdivision.⁹ And a township ordinance prohibiting waterskiing on an inland lake from 4:00 a.m. until 10:00 a.m. the following day is not invalid, either on the theory that a state statute prohibiting waterskiing from one hour after sunset to one hour before sunrise, and otherwise generally regulating motor-boating and waterskiing, preempted the

field, or on the theory that such ordinance exceeded the powers granted by a state statute permitting local ordinances regulating the health and safety of persons and property.¹⁰

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Footnotes

- 1 33 C.F.R. §§ 83.01 to 83.38.
- 2 Am. Jur. 2d, Shipping § 488.
- 3 The O'Brien Brothers, 258 F. 614 (C.C.A. 2d Cir. 1919).
- 4 § 41.
- 5 §§ 43 to 45.
- 6 White v. City of Centralia, 8 Ill. App. 2d 483, 131 N.E.2d 825 (4th Dist. 1956).
- 7 City of Shreveport v. Wilkinson, 182 La. 783, 162 So. 621 (1935).
- 8 Nelson v. De Long, 213 Minn. 425, 7 N.W.2d 342 (1942).
- 9 State ex rel. McElroy v. City of Akron, 173 Ohio St. 189, 19 Ohio Op. 2d 3, 181 N.E.2d 26 (1962).
- 10 Miller v. Fabius Tp. Bd., St. Joseph County, 366 Mich. 250, 114 N.W.2d 205 (1962).

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2. Operation or Navigation

§ 18. Speed limits governing boats

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Forms

Forms relating to speed, see Am. Jur. Pleading and Practice Forms, Boats and Boating [\[Westlaw® Search Query\]](#)

The Federal Inland Navigational Rules require that, in any condition of visibility, every vessel must at all times proceed at a safe speed so that it can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.¹

State or local regulations may also prescribe speed limits for boats operating in certain waters. Thus, a town ordinance prescribing maximum speeds for operating a boat in channels and in dock, anchorage, and bathing areas, is within the scope of the town's police power and within the authority conferred by the state law empowering towns to enact regulations governing the speed and operation of boats within town waters.² Also, a cabin cruiser proceeding in a canalized river which flows through a city park has been found subject not only to a rule promulgated under the state canal law and prescribing a certain speed limit for pleasure boats in the area in question, but also to a city ordinance making it unlawful for motorboats to exceed a certain speed (less than that prescribed by the state rule) on public park waters.³

Footnotes

- 1 33 C.F.R. § 83.06 (Rule 6).
- 2 *People v. Bianchi*, 3 Misc. 2d 696, 155 N.Y.S.2d 703 (Dist. Ct. 1956).
- 3 *People v. Bogner*, 20 Misc. 2d 465, 189 N.Y.S.2d 777 (N.Y. City Ct. 1959).

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2. Operation or Navigation

§ 19. Look-out requirements applicable to boats

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The Federal Inland Navigational Rules require that, in any condition of visibility, every vessel must at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.¹ Rule 5 does not demand that a vessel have a separate person whose sole responsibility is to serve as a lookout. Instead, a vessel captain may serve as the required lookout if she or he has a 360-degree unobstructed view during transit.² Moreover, although a captain delegates crewmembers to administer safety instructions to a passenger, the captain is ultimately responsible for the safety of those onboard, including a passenger, where the captain is in control of the sailboat's operation at all relevant times, and the passenger has been invited aboard.³ The rule thus focuses on the function, rather than the person or persons performing it, and the rule is applied to pleasure craft with a one-man crew, and in those instances, the focus is on lookout function and whether it is carried out in a manner that provides the person directing the movement of the vessel with a full and timely appraisal of the situation and the risk of collision.⁴

A vessel's duty to maintain a proper look-out by sight and by hearing when traversing in navigable waters also stems from general concepts of prudent seamanship, as well as from the statutory rules governing navigation.⁵ Whoever is keeping a lookout for a vessel must be able to give proper attention to that task and should not undertake duties that would interfere with this function.⁶ The duty to maintain a proper look-out varies with the circumstances of each situation, and when the circumstances demand unusual care in navigation, such care should be used.⁷

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Footnotes

- 1 33 C.F.R. § 83.05 (Rule 5).
- 2 *Alexander v. Ingram Barge Company*, 876 F.3d 269 (7th Cir. 2017).
- 3 *Ray v. Lesniak*, 294 F. Supp. 3d 466 (D.S.C. 2018).
- 4 *J.S.G., Jr. v. State*, 927 So. 2d 187 (Fla. 2d DCA 2006).
- 5 *Holt v. Brown*, 185 F. Supp. 3d 727 (D.S.C. 2016).
- 6 *Holt v. Brown*, 185 F. Supp. 3d 727 (D.S.C. 2016).
- 7 *Ray v. Lesniak*, 294 F. Supp. 3d 466 (D.S.C. 2018).

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2. Operation or Navigation

§ 20. Federal laws on reckless or negligent operation of boats

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[Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886](#)

Under federal law, a captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his or her duties on such vessel, and every owner through whose fraud, neglect, connivance, misconduct, or violation of law, "the life of any person is destroyed," shall be fined or imprisoned not more than 10 years, or both.¹

Observation:

Under the principle of ejusdem generis, "other person employed on any or vessel" included only persons in positions of authority responsible for the success of a vessel for purposes of being subject to criminal penalties.²

When the owner or charterer of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined or imprisoned for not more than 10 years, or both.³

A defendant charged with violation of the “Seamans Manslaughter Statute” is not entitled to a bill of particulars compelling the government to specify which of the “fraud, neglect, connivance, misconduct, and violation of law” each of the defendants was alleged to have committed, to identify each act of “fraud, neglect, connivance, misconduct, and violation of law” upon which the government would base its case, and to identify each act of misconduct on the part of each defendant through which the “life of a person was destroyed,” where the indictment sets forth the charges with sufficient precision to enable the defendant to prepare a defense and avoid unfair surprise at trial.⁴ The federal district court does not abuse its discretion, in a trial for misconduct or negligence of a ship officer resulting in death, in refusing to admit portions of an investigative report containing headings that state the report's conclusions, as it is for the jury, not the investigator, to determine whether the defendant caused the passenger's death.⁵

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Footnotes

- 1 18 U.S.C.A. § 1115 (the “Seamans Manslaughter Statute”).
- 2 U.S. v. Kaluza, 780 F.3d 647 (5th Cir. 2015).
- 3 18 U.S.C.A. § 1115.
- 4 U.S. v. Mitlof, 165 F. Supp. 2d 558 (S.D. N.Y. 2001).
- 5 U.S. v. O'Keefe, 426 F.3d 274, 68 Fed. R. Evid. Serv. 312 (5th Cir. 2005).

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2. Operation or Navigation

§ 21. State and local laws on reckless or negligent operation of boats

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Many state and local boating laws contain provisions that expressly or in substance prohibit reckless or negligent operation of motorboats and other watercraft, and impose penalties for persons found guilty of such operation. For example, a town ordinance may properly require a person to operate a boat in town waters in a careful and prudent manner and at a rate of speed as not to disturb the reasonable comfort, endanger the life, limb, or property of another, or interfere with the free and proper use of channel waters.¹ Operating a boat at an unsafe speed may be prohibited in a state administrative code, while state statutes proscribe reckless or negligent boating and drunk boating.² Also, a statute requiring boats to be operated in a careful and prudent manner and at such speed as not to unreasonably interfere with the free and proper use of waters or unreasonably endanger any vessel or person may be violated when the driver of a boat towing a water skier comes into close proximity with swimmers,³ and when an outboard motorboat operator, while towing a water skier, violates certain pilot rules and collides with another boat towing a water-skier as the operator makes a wide turn without slowing down or maintaining a proper lookout.⁴

A statute empowering a state agency to make and enforce such regulations governing watercraft on the waters of state parks “as are necessary” to the proper conduct of such waters, and the regulations promulgated under such statute, prohibiting the operation of watercraft without due regard for the safety and rights of others or in such manner as to endanger life, limb, or property and also prohibiting a powerboat operator from repeatedly changing direction without substantially reducing speed except where necessary to avoid hazards, is void and of no effect as being an unconstitutional delegation of legislative power in failing to set forth adequate standards for the enforcing agency to follow.⁵ A state court has no jurisdiction over a charge against an outboard motorboat operator for alleged violation of the provisions of a state statute prohibiting reckless navigation of a vessel on the navigable waters of the state if the alleged offense occurs on waters outside the defined navigable waters of the state.⁶ And a conviction for reckless operation of a power vessel on state waters in violation of a statute, before a purported

“magistrate” who, as an employee of the executive department charged with enforcement of the statute, is designated by the department head, pursuant to statutory authority, to hear and decide cases of alleged violations, is a nullity on the ground that the statute is unconstitutional for violating separation of powers.⁷

Where a penal statute only empowers a state board to establish regulations governing the operation of power vessels, and providing that the speed of such vessels shall be regulated so as to avoid danger or injury to other craft either by the wave or wash raised by such vessels through excessive speed or otherwise, there can be no valid conviction for careless operation of a power vessel in violation of the statute itself.⁸

An administrative penalty proceeding in a municipal court, charging the defendant with careless operation of a power vessel in violation of a state penal statute, may be deemed essentially a civil suit, so that the state has the burden of proving the case only by a preponderance of the evidence rather than beyond a reasonable doubt.⁹ However, in the prosecution of a motorboat operator for violating a statute on reckless boat operation, the evidence must establish beyond a reasonable doubt that the defendant failed to exercise the care of a reasonably prudent person and thereby endangered other users of the water.¹⁰

As to appellate rights, proceedings for recklessly operating a power vessel in violation of a statute are, at least procedurally, “quasi-criminal” in nature; hence, appeals from convictions in inferior courts for these violations may be governed by a rule of practice that an appeal waives all defects in the record, including any defect in, or absence of, any process or charge laid in the complaint.¹¹

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Footnotes

- 1 [People v. Bianchi, 3 Misc. 2d 696, 155 N.Y.S.2d 703 \(Dist. Ct. 1956\).](#)
- 2 [People v. Armitage, 194 Cal. App. 3d 405, 239 Cal. Rptr. 515 \(3d Dist. 1987\)](#) (finding that violations of each of these were separate offenses).
- 3 [People v. Gorman, 36 Misc. 2d 568, 232 N.Y.S.2d 889 \(County Ct. 1962\).](#)
- 4 [People v. Cummings, 36 Misc. 2d 800, 233 N.Y.S.2d 724 \(N.Y. City Ct. 1962\).](#)
- 5 [State v. Pairan, 80 Ohio L. Abs. 484, 159 N.E.2d 829 \(C.P. 1958\)](#) (nullifying charges for alleged violation of statute and regulations).
- 6 [People v. Hart, 206 Misc. 490, 133 N.Y.S.2d 98 \(County Ct. 1954\)](#) (setting aside conviction).
- 7 [State v. Osborn, 32 N.J. 117, 160 A.2d 42 \(1960\).](#)
- 8 [State v. Cale, 19 N.J. Super. 397, 88 A.2d 529 \(App. Div. 1952\)](#) (affirming judgment finding defendant not guilty).
- 9 [State v. Cale, 19 N.J. Super. 397, 88 A.2d 529 \(App. Div. 1952\).](#)
- 10 [People v. Cummings, 36 Misc. 2d 800, 233 N.Y.S.2d 724 \(N.Y. City Ct. 1962\).](#)
- 11 [State v. Osborn, 32 N.J. 117, 160 A.2d 42 \(1960\).](#)

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B. Particular Regulations and Offenses

2. Operation or Navigation

§ 22. Sound signals required of boats

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The Federal Inland Navigational Rules prescribe certain requirements for power-driven vessels on the methods of sending sound signals and the number and length of blasts or rings,¹ depending upon the weather,² and whether the vessel is in distress or requires assistance.³

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Footnotes

- ¹ [33 C.F.R. § 83.34](#) (Rule 34).
An overtaking vessel only proceeds to overtake another vessel after receiving a consent signal, as opposed to a "danger signal" (or no signal at all), from the overtaken vessel; it is the rule's provision for a clear communication method by signals that creates an overtaken vessel's duty to maintain course and speed, and in the absence of a signal, there is no such duty to maintain course and speed. [Youngberg v. McKeough](#), 534 Fed. Appx. 471 (6th Cir. 2013).
- ² [33 C.F.R. § 83.35](#) (Rule 35—applicable in restricted visibility, and applicable to sailing, fishing, and towing vessels as well).
- ³ [33 C.F.R. § 83.37](#) (Rule 37).

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§ 23. Federal licenses and endorsements requirements for boating

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West's Key Number Digest

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A documented vessel operating under a recreational endorsement may be operated only for pleasure.¹

When the President is satisfied that yachts owned by residents of the United States and used only for pleasure are allowed to arrive at, depart from, and cruise in the waters of a foreign port without entering, clearing, or paying any duties or fees (including cruising license fees), the Secretary of Homeland Security may allow yachts from that foreign port used only for pleasure to arrive at and depart from the ports of the United States and to cruise in the waters of the United States without paying any duties or fees.² However, the Secretary may require foreign yachts to obtain a license to cruise in the waters of the United States. The license shall be in the form prescribed by the Secretary and contain limitations about length of time, direction, place of cruising and action, and other matters the Secretary considers appropriate. The license shall be issued without cost to the yacht.³

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Footnotes

- ¹ 46 U.S.C.A. § 12114(b).
- ² 46 U.S.C.A. § 60504.
- ³ 46 U.S.C.A. § 60504.

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§ 24. State and local licenses required for boating

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The statutes of a number of states require boats operated on state waters to have state licenses, and these statutes are reasonably related to boating safety¹ and are a valid exercise of the state's police power.² Moreover, even though a state has not yet found it necessary to require boat licenses, and although a village in the state has implied power to regulate boating on lakes within its boundaries under its grant of power from the state and as part of its police power, the village does not also have implied power to license motorboats and other watercraft on such lakes, since the activity of recreational boating is not a matter peculiarly subject to local regulation but instead presents a statewide problem.³

A state may preempt the authority to license watercraft, whether operated on public or private waters.⁴ Thus, a property owners association may not restrict the size of speedboats on a subdivision lake without complying with a section of the state's Watercraft Act providing a specific procedure by which a political subdivision may create special rules regarding the operating of vessels on waters within its territorial limits.⁵

A state may grant a municipality power to license boats used within its jurisdiction by statute, to, for example, empower a village to enact an ordinance requiring licenses for the leasing of rowboats used within the village and imposing a reasonable license fee.⁶ Although a borough ordinance that requires the licensing of boats for hire is not unconstitutional as unduly burdening interstate commerce or as containing insufficient standards to guide the licensing officer, a license fee of a certain amount per linear foot of a boat may be unreasonable in comparison with license fees charged other businesses within the borough.⁷

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Footnotes

- 1 State v. Big John, 146 Wis. 2d 741, 432 N.W.2d 576 (1988).
2 State ex rel. McElroy v. City of Akron, 173 Ohio St. 189, 19 Ohio Op. 2d 3, 181 N.E.2d 26 (1962); State
3 v. Big John, 146 Wis. 2d 741, 432 N.W.2d 576 (1988).
4 Village of Brooklyn Center v. Rippen, 255 Minn. 334, 96 N.W.2d 585 (1959).
5 Estill v. Lake Buckhorn Property Owners Ass'n, Inc., 2002-Ohio-2517, 2002 WL 999299 (Ohio Ct. App.
6 5th Dist. Holmes County 2002).
7 As to the preemption of local boating regulations generally by state law, see § 7.
8 Estill v. Lake Buckhorn Property Owners Ass'n, Inc., 2002-Ohio-2517, 2002 WL 999299 (Ohio Ct. App.
9 5th Dist. Holmes County 2002).
10 Poyer v. Village of Desplaines, 22 Ill. App. 576, 1887 WL 2004 (1st Dist. 1887), *aff'd*, 123 Ill. 348, 14 N.E.
11 677 (1888).
12 Borough of Brielle v. Zeigler, 73 N.J. Super. 352, 179 A.2d 789 (County Ct. 1962).

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§ 25. Numbering and registration of boats

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An undocumented vessel equipped with propulsion machinery of any kind must have a number issued by the proper issuing authority in the state in which the vessel principally is operated.¹ The Secretary of the department in which the Coast Guard is operating is to prescribe a standard numbering system for vessels, and on application by a state the Secretary will approved a state numbering system that is consistent with the standard numbering system.²

Practice Tip:

The regulations implementing this mandate are found in the Code of Federal Regulations.³

A certificate of number is granted for the issued number. The certificate is pocket-sized, and must be at all times available for inspection on the vessel for which issued when the vessel is in operation.⁴

Observation:

The certificate of number for a vessel less than 26 feet in length and leased or rented to another for the latter's noncommercial operation of less than seven days may be retained on shore by the vessel's owner or representative at the place from which the vessel departs or returns to the possession of the owner or the owner's representative.⁵

The number must be painted on, or attached to, each side of the forward half of the vessel for which it was issued and must be the size, color and type prescribed by the Secretary. No other number may be carried on the forward half of the vessel.⁶

A state statute providing for the numbering and registration of motorboats and the issuance of a certificate of number to the owner of the boat relates strictly to the registration of motorboats and the issuance of evidences of title, and thus does not comprehend such things as seaworthiness of boats, regulation of motor horsepower, passenger carrying capacities, and the like, so as to prevent a municipality from adopting an ordinance requiring the inspection of boats to be used on a lake within the municipality.⁷

When the state is the authority issuing a number, it may require that the individual in charge of a numbered vessel have a valid safety certificate issued under conditions set by the issuing authority.⁸

Federal law does not prohibit the application of a state's statutory system of numbering and registration of boats to members of an Indian band operating motorized boats outside their reservation, where the state is federally approved as the sole issuing authority in the state for boat certificates under the uniform, mandatory national system for numbering of all motorized boats.⁹

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Footnotes

- 1 [46 U.S.C.A. § 12301\(a\)](#).
Although court should have explained to jury that vessel “numbered as provided by Chapter 123 of Title 46” refers to vessel being numbered by state which has numbering system approved by Secretary of Transportation, error did not result in miscarriage of justice where there was extensive testimony that vessel was vessel of United States. [U.S. v. Behety, 32 F.3d 503 \(11th Cir. 1994\)](#).
Penalties are prescribed for violating numbering statutes, see [46 U.S.C.A. § 12309](#).
- 2 [46 U.S.C.A. § 12302\(a\)](#).
- 3 [33 C.F.R. §§ 173.1 to 173.85](#).
- 4 [46 U.S.C.A. § 12304\(a\)](#).
- 5 [46 U.S.C.A. § 12304\(a\)](#).
- 6 [46 U.S.C.A. § 12305](#).
- 7 [City of Stamford v. Ballard, 162 Tex. 22, 344 S.W.2d 861 \(1961\)](#).
- 8 [46 U.S.C.A. § 12306](#) (also stating an exception to this requirement for vessels subject to manning requirements under [46 U.S.C.A. §§ 8101 to 9308](#)).

9 [State v. Big John, 146 Wis. 2d 741, 432 N.W.2d 576 \(1988\).](#)

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D. Nuisances

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D. Nuisances

§ 26. Motorboats as nuisance

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West's Key Number Digest, [Nuisance](#)  3(3)

A.L.R. Library

[Water sports, amusements, or exhibitions as nuisance, 80 A.L.R.2d 1124](#)

[Rights of fishing, boating, bathing, or the like in inland lakes, 57 A.L.R.2d 569](#)

Trial Strategy

[Cause of Action for Private Nuisance Caused by Noise, Light, or Odors Emanating from Neighboring Property, 26 Causes of Action 2d 277 §§ 1 et seq.](#)

The operation of a motorboat on an inland lake may not be enjoined as a nuisance in the absence of sufficient evidence to show that it was operated so as to produce unreasonable noise, shore erosion, disturbance of fish beds, or danger to swimmers, especially if the plaintiff has the remedy of exercising its reserved rights as grantor under a deed to the defendant of land bordering the lake, to make rules reasonably restricting the operation of motorboats on the lake.¹ Similarly, riparian landowners are not entitled to enjoin the operation of motorboats on a navigable stream at allegedly excessive speeds, in the absence of evidence showing that the statute prescribing speed limits was violated or that the boats were operated at such a speed and

in such a manner as to create waves that damaged the riparian lands created a wrongful invasion of the rights of the riparian landowners.²

If it is alleged that a marina created a private nuisance partly resulting from pollution caused to a lake by its motorboats, then no cause of action is asserted if aggrieved landowners fail to demonstrate that the business activities interfered with the present use and enjoyment of their property.³

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Footnotes

- 1 [Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420 \(1950\).](#)
- 2 [McCauley v. Salmon, 234 Iowa 1020, 14 N.W.2d 715 \(1944\).](#)
- 3 [Guzzardi v. Perry's Boats, Inc., 92 A.D.2d 250, 460 N.Y.S.2d 78 \(2d Dep't 1983\).](#)

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D. Nuisances

§ 27. Boat liveries as nuisance

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West's Key Number Digest, [Nuisance](#)  3(3)

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[Water sports, amusements, or exhibitions as nuisance, 80 A.L.R.2d 1124](#)

[Rights of fishing, boating, bathing, or the like in inland lakes, 57 A.L.R.2d 569](#)

A public pleasure resort, equipped with boating facilities among other forms of entertainment, may become a nuisance if improperly conducted.¹ Thus, in an action by owners of land abutting on a lake against another owner, seeking to restrain an alleged nuisance created by rowboats rentals on the lake, evidence that the boats are tied to the plaintiffs' pier and docked to their beaches, that the occupants were found ashore engaging in offensive activities, and that the trespasses were committed by persons using the boats rented by the defendant, may suffice to justify a finding that the users of the boats were largely responsible for creating the nuisance.² Furthermore, the establishment of an amusement resort that planned to rent boats on a small lake in the middle of an exclusively residential area, may be enjoined under proper circumstances as an activity that would necessarily result in a neighborhood nuisance.³

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Footnotes

- ¹ [Rockville Water & Aqueduct Co. v. Koelsch, 90 Conn. 171, 96 A. 947 \(1916\).](#)
² [Snively v. Jaber, 48 Wash. 2d 815, 296 P.2d 1015, 57 A.L.R.2d 560 \(1956\).](#)

3 [Turtle v. Fitchett, 156 Wash. 328, 287 P. 7 \(1930\).](#)

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III. Boating Rights on Inland Lakes

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III. Boating Rights on Inland Lakes

§ 28. Relative public and private boating rights on inland lakes

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West's Key Number Digest, [Water Law](#)  1163

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[Public rights of recreational boating, fishing, wading, or the like in inland stream the bed of which is privately owned, 6 A.L.R.4th 1030](#)

[Rights of fishing, boating, bathing, or the like in inland lakes, 57 A.L.R.2d 569](#)

The legal title to the beds of all navigable lakes to the high-water mark is in the state in trust for the use and benefit of the public, which thus generally has a right of access to navigable watercourses.¹

If a body of water is nonnavigable, however, it is privately owned by those who own the land beneath the water's surface and the lands abutting it and may be regulated by them.² Thus, as to private or nonnavigable lakes, the owners of the lake bed generally have exclusive boating rights as against the general public.³

The public may not use a nonnavigable stream flowing over private land for canoeing or other uses without consent of the landowner if no prescriptive easement has been established, and thus the landowner may build a fence over the stream to prevent the use.⁴

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Footnotes

- 1 Orr v. Mortvedt, 735 N.W.2d 610 (Iowa 2007).
- 2 Orr v. Mortvedt, 735 N.W.2d 610 (Iowa 2007).
- 3 Baker v. Normanoch Ass'n, 25 N.J. 407, 136 A.2d 645 (1957); Wickouski v. Swift, 203 Va. 467, 124 S.E.2d
892 (1962).
- 4 State ex rel. Meek v. Hays, 246 Kan. 99, 785 P.2d 1356 (1990).

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III. Boating Rights on Inland Lakes

§ 29. Relative private boating rights in inland lake

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West's Key Number Digest, [Water Law](#)  1163

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[Rights of fishing, boating, bathing, or the like in inland lakes, 57 A.L.R.2d 569](#)

Where common-law principles govern, the owner of a part of a lake bed may exclude from the surface of the overlying water all other persons, including those who own other parts of the lake bed, particularly if the interest of the party challenging the restriction was quite small in comparison with the interest of the majority owner.¹

Practice Tip:

In those states following the civil law, however the owner of a part of a lake bed has a right to the reasonable use and enjoyment of the entire lake surface.² The states that have adopted the civil law rule have been concerned with promoting the recreational use and enjoyment of lakes, have an extensive number of lakes with recreational value, or have been concerned with attempts to establish and obey definite property lines where several adjoining owners are involved.³

Thus, under common-law principles, where various parts of the bed of a lake are owned by different persons by survey or by metes and bounds, rather than by virtue of riparian rights, each owner has the exclusive right of boating upon the surface of the water over his or her land,⁴ or at least the owner of a larger portion can exclude from it the owner of a small portion.⁵ By contrast, the owners of various portions of the bed of a lake by virtue of purely riparian rights are entitled in common to make use of the entire surface of the lake for boating.⁶ However, this does not have the effect of making a nonnavigable or private lake public, since a stranger has no right to enter upon the lake without permission of an abutting owner.⁷ Moreover, a riparian owner may have the right to make use of a lake for boating over its entire surface in common with other abutting owners, regardless of the navigable or public character of the lake and regardless of the ownership of the lake bed, and where the public is represented by a municipality as a riparian owner, the public, through the municipality, may enjoy the privileges incident to such common riparian right of boating.⁸

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Footnotes

- 1 [Beacham v. Lake Zurich Property Owners Ass'n](#), 123 Ill. 2d 227, 122 Ill. Dec. 14, 526 N.E.2d 154 (1988).
- 2 [Duval v. Thomas](#), 114 So. 2d 791 (Fla. 1959); [Johnson v. Seifert](#), 257 Minn. 159, 100 N.W.2d 689 (1960).
- 3 [Ours v. Grace Property, Inc.](#), 186 W. Va. 296, 412 S.E.2d 490 (1991).
- 4 [Wickowski v. Swift](#), 203 Va. 467, 124 S.E.2d 892 (1962).
- 5 [Baker v. Normanoch Ass'n](#), 25 N.J. 407, 136 A.2d 645 (1957).
- 6 [Taylor Fishing Club v. Hammett](#), 88 S.W.2d 127 (Tex. Civ. App. Waco 1935), writ dismissed.
- 7 [Snively v. Jaber](#), 48 Wash. 2d 815, 296 P.2d 1015, 57 A.L.R.2d 560 (1956).
- 8 [Flynn v. Beisel](#), 257 Minn. 531, 102 N.W.2d 284 (1960).

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III. Boating Rights on Inland Lakes

§ 30. Boating rights by prescription or dedication

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[Rights of fishing, boating, bathing, or the like in inland lakes, 57 A.L.R.2d 569](#)

The general public may not acquire boating rights in a private lake by prescription,¹ but may acquire these rights by dedication.²

Private individual rights or easements of boating, however, may be acquired in a private lake by prescription.³ As with the acquisition of title by adverse possession, the use must be adverse or hostile, exclusive, continuous, uninterrupted, visible and notorious for the statutory period.⁴ Thus, a mere permissive use, or a use made without objection, will not establish the prescriptive right.⁵

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Footnotes

- 1 [Camp Clearwater, Inc. v. Plock](#), 52 N.J. Super. 583, 146 A.2d 527 (Ch. Div. 1958), judgment aff'd, 59 N.J. Super. 1, 157 A.2d 15 (App. Div. 1959).
- 2 [Baker v. Normanoch Ass'n](#), 25 N.J. 407, 136 A.2d 645 (1957).
- 3 [Frech v. Piontkowski](#), 296 Conn. 43, 994 A.2d 84 (2010) (manufactured reservoir); [Loughran v. Matylewicz](#), 367 Pa. 593, 81 A.2d 879 (1951).
- 4 [Baker v. Normanoch Ass'n](#), 25 N.J. 407, 136 A.2d 645 (1957).

5 [Baker v. Normanoch Ass'n, 25 N.J. 407, 136 A.2d 645 \(1957\); Camp Clearwater, Inc. v. Plock, 52 N.J. Super. 583, 146 A.2d 527 \(Ch. Div. 1958\), judgment aff'd, 59 N.J. Super. 1, 157 A.2d 15 \(App. Div. 1959\).](#)

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Research References

West's Key Number Digest

West's Key Number Digest, [Maritime Liens](#)  3, 7, 11, 12

West's Key Number Digest, [Shipping](#)  3.5, 133

A.L.R. Library

A.L.R. Index, Liens and Encumbrances

A.L.R. Index, Pleasure Boats

A.L.R. Index, Ship Mortgage Act

A.L.R. Index, Ships and Vessels

A.L.R. Index, Yachts

West's A.L.R. Digest, [Maritime Liens](#)  3, 7, 11, 12

West's A.L.R. Digest, [Shipping](#)  3.5, 133

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IV. Mortgages and Liens

§ 31. Mortgages on vessels, generally; governing law

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West's Key Number Digest

West's Key Number Digest, [Maritime Liens](#)  3

West's Key Number Digest, [Shipping](#)  3.5

The rules governing the mortgage of vessels are with some exceptions those prescribed by the state to which the vessel belongs, and such a sale is within the provisions of local statutes governing sales of personal property, including consideration of relevant Uniform Commercial Code provisions.¹ Mortgages of vessels documented as vessels of the United States are security interests subject to federal regulation and are not secured transactions covered by Article 9 of the Uniform Commercial Code;² where the Uniform Commercial Code is inapplicable, security interest disputes may be resolved by reference to existing statutes, pre-Code case law, and case law from other jurisdictions.³

Observation:

“Vessel,” under the federal shipping laws, refers to every description of watercraft used, or capable of being used, as a means of transportation on water.⁴ The term is not limited to craft engaged in commerce, and thus applies to small pleasure craft engaged in noncommercial navigation, such as motorboats, houseboats, “jet ski” personal watercraft, and yachts.⁵

Under the Ship Mortgage Act, a bill of sale, conveyance, mortgage, assignment or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with

the Secretary of Homeland Security to be valid, to the extent the vessel is involved, against any person except (1) the grantor, mortgagor, or assignor; (2) the heir or devisee of the grantor, mortgagor, or assignor; and (3) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.⁶

Priority between mortgages is generally determined based on the timing of recordation with the Coast Guard, and where the mortgages are recorded at the exact same moment, they are treated as on an equal footing, entitling the mortgagees to a proportionate share of the proceeds.⁷ Substantial compliance with recordation requirements of the Ship Mortgage Act is adequate to show eligibility for preferred status under the Act; irregularities in recorded mortgage documents or failure to comply with the minutiae of recording will not result in the loss of preferred status of the mortgagee where there is honest and substantial compliance with the statutes.⁸

Distinction:

Preferred ship mortgages are distinct from maritime liens⁹ in that preferred ship mortgages must be recorded in order to be valid while maritime liens need not be recorded.¹⁰

A bank may be entitled to the proceeds from the sale of a yacht, even though the mortgage was acknowledged by a specially authorized agent for the mortgagor and not an officer or attorney in fact of the corporate mortgagor, where the bank substantially complied with the statutory requirements¹¹ and thus obtains a preferred mortgage lien.¹²

Practice Tip:

Federal district courts have original jurisdiction of civil actions brought to enforce a preferred mortgage lien¹³ in a civil action in rem on a documented vessel, or vessel to be documented, a vessel titled in a state, or a foreign vessel; or to enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in a civil action in personam in admiralty against the mortgagor, maker, comaker or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness, and over a civil action against the mortgagor, maker, comaker or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness.¹⁴ Federal district courts have original and exclusive jurisdiction over civil actions in rem to enforce a preferred mortgage lien for a documented vessel, a vessel to be documented, or a foreign vessel.¹⁵ Other remedies allowed by applicable law, including extrajudicial remedies, are also expressly permitted by federal statute in the enforcement of a defaulted preferred mortgage lien, provided other specific provisions of federal shipping law are not violated.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Maritime liens cannot be created as matter of contract; Commercial Instruments and Maritime Liens Act (CIMLA) provides only means to obtain one. [46 U.S.C.A. § 31341 et seq.](#) [ING Bank N.V. v. Bomin Bunker Oil Corporation](#), 953 F.3d 390 (5th Cir. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Am. Jur. 2d, Shipping § 132.](#)
- 2 [Am. Jur. 2d, Shipping § 140.](#)
- 3 [Am. Jur. 2d, Secured Transactions § 16.](#)
- 4 [Am. Jur. 2d, Shipping § 1.](#)
- 5 [Am. Jur. 2d, Shipping § 7.](#)
- 6 [46 U.S.C.A. § 31321\(a\)\(1\).](#)
- 7 [U.S. v. Austal USA LLC](#), 815 F. Supp. 2d 948 (E.D. Va. 2011).
- 8 [Branch Banking & Trust Co. of Virginia v. M/Y Beowulf](#), 883 F. Supp. 2d 1199, 77 U.C.C. Rep. Serv. 2d 743 (S.D. Fla. 2012) (vessel's failure to have an affixed HIN did not render its documentation invalid for purposes of recording).
- 9 [§§ 32, 33.](#)
- 10 [L & L Electronics, Inc. v. M/V OSPREY](#), 764 F. Supp. 2d 270 (D. Mass. 2011) (holding that while [46 U.S.C.A. § 31343](#) provides for he permissive recording of a maritime lien, [46 U.S.C.A. § 31321](#) mandates that mortgages be recorded).
- 11 [46 U.S.C.A. § 31321.](#)
- 12 [Maryland Nat. Bank v. Yacht Escape II](#), 817 F. Supp. 1 (E.D. N.Y. 1993) (noting that federal law, not state law, applies to the acknowledgments of mortgages).
- 13 [46 U.S.C.A. § 31325\(c\).](#)
- 14 [46 U.S.C.A. §§ 31325\(a\), \(b\).](#)
While any damages in an in rem action are limited to the parties' interest in the boat, an in personam action is filed against the owner personally, and as such, if the proceeds of the sale of the vessel do not satisfy the judgment, the owner remains liable for the balance of the amount. [Bank of the West v. Sailing Yacht Serendipity](#), 101 F. Supp. 3d 238 (E.D. N.Y. 2015).
- 15 [46 U.S.C.A. § 31325\(c\)](#) (statute expressly refers to the documentation provisions of Title 46, Chapter 121 ([46 U.S.C.A. §§ 12101 to 12152](#))).
- 16 [46 U.S.C.A. § 31325\(b\)\(3\).](#)

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IV. Mortgages and Liens

§ 32. Maritime liens for repairs, supplies, and other necessities

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West's Key Number Digest

West's Key Number Digest, [Maritime Liens](#) 7, 11, 12

West's Key Number Digest, [Shipping](#) 133

Any person providing “necessaries” to any private vessel, upon the order of the owner or of a person authorized by the owner, has a maritime lien on the vessel, enforceable by suit in rem.¹ Maritime liens enable a vessel to obtain supplies or repairs necessary to her continued operation by giving a temporary underlying pledge of the vessel which will hold until payment can be made or more formal security given.²

The following persons are presumed to have authority to procure necessities for a vessel: the owner; the master; a person entrusted with the management of the vessel at the port of supply; or a properly appointed officer or agent.³ A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessities for the vessel.⁴

Pleasure craft qualify as “vessels” under federal shipping laws.⁵ However, unfinished pleasure boats which have never been launched in the water, and are still part of inventory at a business establishment, are not “vessels” within the federal maritime lien statutes and, therefore, are not subject to maritime jurisdiction.⁶

A master and owner of a vessel may not be compelled to post bond to obtain release of the vessel, in an action brought by a yacht club to enforce its lien on the vessel pursuant to the Federal Maritime Lien Act. The club's proper remedy, instead, is to seek a court order for an interlocutory sale.⁷

The statutory rate of prejudgment interest, rather than the higher contractual rate, applies to a maritime lien claim for necessities.⁸

Footnotes

- 1 [46 U.S.C.A. § 31342](#) (also providing that a lienor is not required to allege or prove in the action that credit was given to the vessel).
- 2 [Stevens Shipping and Terminal Company v. JAPAN RAINBOW, II MV](#), 334 F.3d 439 (5th Cir. 2003).
- 3 [46 U.S.C.A. § 31341\(a\)](#).
- 4 [46 U.S.C.A. § 31341\(b\)](#).
- 5 [Am. Jur. 2d, Shipping § 7](#).
- 6 [Trident Marine Managers, Inc. v. M/V Serial No. CEBRF0661586](#), 688 F. Supp. 301 (S.D. Tex. 1987).
- 7 [Capital Yacht Club v. Vessel AVIVA](#), 228 F.R.D. 389 (D.D.C. 2005).
- 8 [Liverpool and London S.S. Protection & Indem. Ass'n Ltd. v. M/V ABRA](#), 295 F. Supp. 2d 674 (M.D. La. 2003).

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IV. Mortgages and Liens

§ 33. Maritime liens for repairs, supplies, and other necessities—Items constituting “necessaries”

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West's Key Number Digest

West's Key Number Digest, [Maritime Liens](#)  [7](#), [11](#), [12](#)

To determine whether services constitute "necessaries," as required to establish a maritime lien on a vessel, a court examines the role of the service in enabling the vessel to continue in its intended function.¹ Most goods or services that are useful to the vessel, keep her out of danger, and enable her to perform her particular function are "necessaries," as required to establish a maritime lien on a vessel; it is the present, apparent want of the vessel that makes it a necessary.² The test of what is necessary has been interpreted expansively in some circuits, to include what is reasonably needed in the ship's business.³ Necessaries for purposes of a maritime lien are things a prudent owner would provide to enable a ship to perform well the functions for which she has been engaged, including money, labor and skill, and personal services as well as materials, and are not limited to things that are physically delivered to the vessel, as such a limitation would foreclose any intangible services from ever being held to be necessities.⁴

Because insurance is essential to keep a vessel in commerce, it is “necessary,” and unpaid insurance premiums thus may give rise a maritime lien.⁵ An unpaid mutual insurance association may claim a maritime lien in a vessel for necessities, even though it has billed the owner a single amount for insurance of the owner's entire fleet, if certificates of entry earmarked insurance coverage for each particular vessel by identifying the ship and indicating its tonnage.⁶

Freight, demurrage and defense (FD&D) coverage afforded to a vessel owner by a mutual insurance association is not “necessary,” as such coverage, which is for the owner's legal fees and expenses, is neither required for the vessel's normal operation nor needed to carry on its business.⁷ Legal services on behalf of a vessel are not “necessaries” within the meaning of the section of the Federal Maritime Law Act (FMLA)⁸ affording a maritime lien to a person providing necessities to a vessel.⁹

Docking services provided to a vessel at its owner's order are "necessaries" under the Federal Maritime Liens Act,¹⁰ as is the fuel for the vessel.¹¹ Even display containers used to display a corporation's wares at conventions will be deemed "necessaries" for purposes of a lien held by a company hired to convert a tank barge and render it suitable to carry a series of containers to display a corporation's wares at numerous conventions across North America where the containers are reasonably needed for the barge to function as a mobile exhibit hall, and the structures are installed on the barge not merely for transportation but so that the public can come aboard and view them.¹²

CUMULATIVE SUPPLEMENT

Cases:

Despite liberal construction of the term necessaries, maritime liens possessed by a person providing necessaries to a vessel are governed by the principle of stricti juris and will not be extended by construction, analogy, or inference. 46 U.S.C.A. § 31342. *Robbie's of Key West v. M/V Komedly III*, 470 F. Supp. 3d 1264 (S.D. Fla. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Portland Pilots, Inc. v. NOVA STAR M/V](#), 875 F.3d 38 (1st Cir. 2017).
- 2 [Portland Pilots, Inc. v. NOVA STAR M/V](#), 875 F.3d 38 (1st Cir. 2017) (holding that the use of rental items, or rental delivery, retrieval, and cleaning services were not "necessaries" to continued operation of vessel as mobile hotel beyond date that ferry season concluded).
- 3 [Ironhead Marine, Inc. v. Barge Exiderdome No. 1](#), 635 F. Supp. 2d 386 (D.N.J. 2009).
- 4 [Equilease Corp. v. M/V Sampson](#), 793 F.2d 598 (5th Cir. 1986).
- 5 [Equilease Corp. v. M/V Sampson](#), 793 F.2d 598 (5th Cir. 1986).
- 6 [Liverpool and London S.S. Protection & Indem. Ass'n Ltd. v. M/V ABRA](#), 295 F. Supp. 2d 674 (M.D. La. 2003).
- 7 [Liverpool and London S.S. Protection & Indem. Ass'n Ltd. v. M/V ABRA](#), 295 F. Supp. 2d 674 (M.D. La. 2003).
- 8 46 U.S.C.A. § 31342.
- 9 [Gulf Marine and Indus. Supplies, Inc. v. GOLDEN PRINCE M/V](#), 230 F.3d 178 (5th Cir. 2000).
- 10 [Canton Port Services, LLC v. M/V SNOW BIRD](#), 690 F. Supp. 2d 405 (D. Md. 2010).
- 11 [Triton Marine Fuels, Ltd. v. M/V PACIFIC CHUKOTKA](#), 671 F. Supp. 2d 753 (D. Md. 2009).
- 12 [Ironhead Marine, Inc. v. Barge Exiderdome No. 1](#), 635 F. Supp. 2d 386 (D.N.J. 2009).

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A. In General

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West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79 to 81(1), 82, 83, 85, 166(3)

A.L.R. Library

A.L.R. Index, Jet Skis

A.L.R. Index, Pleasure Boats

A.L.R. Index, Yachts

West's A.L.R. Digest, [Shipping](#)  79 to 81(1), 82, 83, 85, 166(3)

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 34. Tort liability of motorboat owners and operators, generally

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West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79 to 81(1), 82, 83

Tort cases involving vessels and their management, whether brought in a court of law or of admiralty, are governed in large measure by the substantive principles that determine the rights and liabilities of parties in other civil cases at law,¹ as, in the absence of legislation regulating the operation of pleasure craft upon public streams, fundamental common-law tort principles apply.² While the vessel itself is subject to tort liability as a principal, the owners of a vessel are responsible for its torts jointly and severally.³ A “bareboat charter” is a document under which one who charters or leases a boat becomes for the period of the charter the owner for all practical purposes.⁴

With respect to the general application of these principles, no distinction is made between large and small vessels, so that in determining the liability of an owner or operator of a motorboat for personal injury or property damage, motorboats are governed by the same rules and standards as larger or different craft.⁵ A case that involves a watercraft collision on navigable waters falls within admiralty's domain.⁶ Thus, an action to recover for personal injuries sustained in a personal watercraft collision is controlled by federal admiralty law if the collision occurs on navigable waters and had a substantial connection to traditional maritime activities.⁷

A federal court has admiralty jurisdiction over a pleasure boat passenger's suit against the owner of another pleasure boat to recover for injuries caused by collisions on the Tennessee River, a navigable waterway of the United States.⁸

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Footnotes

¹ [Am. Jur. 2d, Shipping](#) § 350.

- 2 [Nugen v. Hildebrand](#), 145 W. Va. 420, 114 S.E.2d 896 (1960) (action for injuries to water skier who fell
and was struck by following motorboat).
- 3 [Am. Jur. 2d, Shipping § 350.](#)
- 4 [New Orleans Tanker Corp. v. Department of Transp.](#), 1999 ME 67, 728 A.2d 673 (Me. 1999).
- 5 As to the liability of motorboat owners and operators for damages, see §§ 34 to 61.
- 6 [Yamaha Motor Corp., U.S.A. v. Calhoun](#), 516 U.S. 199, 116 S. Ct. 619, 133 L. Ed. 2d 578 (1996).
- 7 [Moore v. Matthews](#), 445 F. Supp. 2d 516 (D. Md. 2006).
- A personal watercraft accident involving a young child's crash into breakwater has a sufficient nexus with
maritime commerce to support admiralty jurisdiction, even though the child was on the watercraft for only
a brief moment before the injuries occurred, given potential disruptive effect of accident investigation on
maritime commerce and substantial relation of personal watercraft use on navigable waters to maritime
activities. [Szollosy v. Hyatt Corp.](#), 208 F. Supp. 2d 205 (D. Conn. 2002).
- 8 [Vinson v. Cobb](#), 501 F. Supp. 2d 1125 (E.D. Tenn. 2007).

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 35. Standard of care and duty of owner or operator of motorboat

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West's Key Number Digest

West's Key Number Digest, [Shipping](#) 79 to 81(1), 82, 83

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[Liability of owner or operator of pleasure boat for injury or death of guest passenger, 35 A.L.R.4th 104](#)

[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

Trial Strategy

[Negligent Operation of Pleasure Boat, 43 Am. Jur. Proof of Facts 2d 395](#)

[Cause of Action Against Operator of Pleasure Boat for Injury Suffered in Boating Accident, 38 Causes of Action 2d 451](#) §§
1 et seq.

The owner or operator of a pleasure boat owes to guest passengers a duty to exercise ordinary or reasonable care to protect the passengers from injury and is answerable for any injury suffered by a passenger on account of the breach of that duty.¹ Where a passenger is injured while on a boat during a small craft advisory, and an expert testifies that vessels of the size and configuration

of the one at issue should have proceeded at idle speed and have approached the oncoming waves at an angle, instead of straight at the waves at speed, as the boat did in the particular case, the evidence establishes the operator's failure to exercise due care.² A per se case of negligence might be made in instances where the master of a ship sets sail in weather conditions so extreme that any reasonable person would recognize the peril.³ In assessing the potential negligence of a vessel's master, courts have looked to a variety of factors: the captain's experience, the anticipated sea conditions, the fitness of the crew, the seaworthiness of the vessel, and the relative risks of the voyage.⁴ Any boater, even a recreational one, is charged with knowledge of all warnings and hazards contained in National Oceanic and Atmospheric Association (NOAA) charts.⁵ By including power lines in the National Oceanic and Atmospheric Association (NOAA) charts, a city fulfilled its duty to warn as a matter of law with respect to maritime negligence claims brought by a boater whose sailboat hit power transmission cables suspended above a bay.⁶

The issue in a negligence action of whether a boat owner breached the duty of care to boat passengers who were injured when the boat collided is a jury question.⁷

In an action to recover for the death of one who died when a motorboat in which he or she was riding as a guest collides with another boat, the standard of care owed by the boat operator to guests is one of ordinary care.⁸ The operator of a boat has no duty to warn a passenger about the dangers of docking the boat, as a reasonable adult would recognize the dangers of standing on a boat when someone is attempting to dock it.⁹

The operator of a motorboat owes to a water skier being towed by another motorboat a duty of due care.¹⁰

An overtaking vessel assumes those risks inherent in the maneuver and the overtaking vessel bears the responsibility of a resulting collision absent proof that the overtaken vessel was at fault.¹¹ There is a duty to warn that is incumbent upon the overtaken vessel, but because this arises only when the overtaken vessel believes it is unsafe to pass, this duty arises only when there is the existence of conscious awareness of peril or danger.¹²

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Footnotes

- 1 [Gele v. Chevron Oil Co., 574 F.2d 243 \(5th Cir. 1978\); Roper v. Stafford, 444 A.2d 289 \(Del. Super. Ct. 1982\).](#)
Owners and operators of motorboats have a duty to ensure that the motorboat is operated in a reasonably safe manner. [Dewitt v. Poovey, 111 A.D.3d 540, 976 N.Y.S.2d 30 \(1st Dep't 2013\).](#)
- 2 [Hines v. Triad Marine Center, Inc., 487 Fed. Appx. 58 \(4th Cir. 2012\).](#)
- 3 [Spottiswoode v. Son, 593 F. Supp. 2d 347 \(D. Mass. 2009\).](#)
- 4 [Spottiswoode v. Son, 593 F. Supp. 2d 347 \(D. Mass. 2009\)](#) (finding that in the face of a small craft advisory, on the evidence at hand, the court could not say whether there was negligence one way or another, and where the plaintiff boat owner failed to carry the burden of proof on the issue of negligence, judgment would be entered for the defendant operator).
- 5 [Alprin v. City of Tacoma, 139 Wash. App. 166, 159 P.3d 448 \(Div. 2 2007\).](#)
A yacht owner fails to exercise reasonable care by not having his yacht moved from an exposed harbor when forecasters predicted gale force winds several days before a storm broke the ship free from its moorings, even though he was out of the country, as required to rebut the presumption of the "Louisiana rule" that a ship owner is liable for damages when his ship breaks free from its moorings and causes damage to a stationary object. [Crowley v. Costa, 924 F. Supp. 2d 402 \(D. Conn. 2013\).](#)
- 6 [Alprin v. City of Tacoma, 139 Wash. App. 166, 159 P.3d 448 \(Div. 2 2007\).](#)
- 7 [Schuff v. Jackson, 2008 MT 81, 342 Mont. 156, 179 P.3d 1169 \(2008\)](#) (collision with rock formation).
- 8 [Clipp v. Weaver, 451 N.E.2d 1092 \(Ind. 1983\).](#)

- 9 [Wilson v. Bell Fuels, Inc., 214 Ill. App. 3d 868, 158 Ill. Dec. 406, 574 N.E.2d 200 \(1st Dist. 1991\).](#)
- 10 [Nugen v. Hildebrand, 145 W. Va. 420, 114 S.E.2d 896 \(1960\).](#)
- 11 [Intercontinental Bulk tank Corp. v. M/S Shinto Maru, 422 F. Supp. 982 \(D. Or. 1976\).](#)
- 12 [Intercontinental Bulk tank Corp. v. M/S Shinto Maru, 422 F. Supp. 982 \(D. Or. 1976\).](#)

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 36. Standard of care and duty of owner or operator of motorboat—Carriers

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[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

Forms

Forms relating to carriers, see Am. Jur. Pleading and Practice Forms, Boats and Boating [\[Westlaw® Search Query\]](#)

If a motorboat is used to take passengers for hire on pleasure trips, the owner, as a common carrier, must exercise the degree of care required of such carriers, so that, for example, the owner of an excursion motorboat is governed by the rule that a common carrier has a duty to exercise the highest degree of care and is liable for even slight negligence.¹ In carrying passengers for hire in a speedboat licensed as a common carrier for that purpose, the owner must provide a seaworthy boat, equip it with the usual and necessary appliances, maintain it in good condition and repair, and operate it with a high degree of care.² Similarly, the owner of a boat who operates as a private carrier for hire has a duty to exercise a high degree of care.³

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Footnotes

- 1 [Loc-Wood Boat & Motors, Inc. v. Rockwell](#), 245 F.2d 306 (8th Cir. 1957) (overruled on other grounds by, [Three Buoys Houseboat Vacations U.S.A. Ltd. v. Morts](#), 921 F.2d 775 (8th Cir. 1990)).
In a negligence action for personal injuries allegedly sustained when the plaintiff fell off of a rubber inflatable boat while it was being towed by a motor boat hired for a private party at a residence, the owner of the motorboat could not be held liable for direct negligence where the owner was not present and hired an experienced boat operator who had safely operated the boat in the past. [Dewitt v. Poovey](#), 111 A.D.3d 540, 976 N.Y.S.2d 30 (1st Dep't 2013).
- 2 [Kulack v. The Pearl Jack](#), 79 F. Supp. 802 (W.D. Mich. 1948), judgment aff'd, 178 F.2d 154 (6th Cir. 1949).
- 3 [The Nereid](#), 40 F. Supp. 736 (D.N.J. 1941).

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 37. Standard of care and duty of owner or operator of motorboat—Minor operators

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West's Key Number Digest, [Shipping](#) 79 to 81(1), 82, 83

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[Modern trends as to tort liability of child of tender years, 27 A.L.R.4th 15](#)

[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

There is a difference of opinion as to the standard of care required of a minor in operating a motorboat. On the one hand, in accord with the comparable rule in negligence actions generally, and with respect to the operation of automobiles in particular, the view has been taken that a minor operator of a motorboat is charged only with the degree of care which a minor of the same age would use under the same or similar circumstances, in the exercise of ordinary care.¹ On the other hand, it has been held that in the operation of a motorboat, a minor is to be judged by the same standard of care as an adult, rather than that of a child of similar age.²

Observation:

This general split of authority is reflected in the Restatement of Torts 2d standard for judging the negligence of minors. While the general rule is that if an actor is a child, the standard of conduct is that of a reasonable person of like age, intelligence and experience under like circumstances,³ it is made clear in the comments that minors participating in adult activities, such as driving a car or flying an airplane, must conform to adult standards.⁴ Under the Restatement of Torts 3d standard, a child's conduct is negligent if it does not conform to that of a reasonably careful person of the same age, intelligence, and experience, except that a child less than five years of age is incapable of negligence, and that this special rule does not apply when the child is engaging in a dangerous activity that is characteristically undertaken by adults.⁵ When children choose to engage in dangerous activities characteristically engaged in by adults, such as driving a car, a tractor, or a motorcycle, and operating other motorized vehicles such as minibikes, motorscooters, dirt bikes, and snowmobiles, no account is taken of their childhood and ordinary negligence rules apply.⁶

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Footnotes

- 1 [Dickey v. Thornburgh](#), 82 Cal. App. 2d 723, 187 P.2d 132 (4th Dist. 1947) (involving 16-year-old boy).
As to the general rules applicable to the liability of minors in negligence actions, see [Am. Jur. 2d, Infants § 121](#).
- 2 [Dellwo v. Pearson](#), 259 Minn. 452, 107 N.W.2d 859, 97 A.L.R.2d 866 (1961) (involving 12-year-old boy).
- 3 [Restatement Second, Torts § 283A](#).
- 4 [Restatement Second, Torts § 283A](#), comment c.
- 5 [Restatement Third, Torts: Liability for Physical and Emotional Harm § 10](#).
- 6 [Restatement Third, Torts: Liability for Physical and Emotional Harm § 10](#), comment f.

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12 Am. Jur. 2d Boats and Boating § 38

American Jurisprudence, Second Edition | May 2021 Update

Boats and Boating
Sonja Larsen, J.D.

V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 38. Standard of care and duty of owner or operator of motorboat —Duty to persons aboard; applicability of “guest” statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)
[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

The owner of a vessel owes to every person lawfully on board by express or implied invitation in the transaction of proper business a general duty to provide reasonable security against danger to life and limb, and to exercise ordinary care to protect the passengers from injury, and is answerable for any injury suffered by persons on account of the breach of that duty by the owner or on the part of those in charge of the vessel.¹

The duty of reasonable care with respect to guest passengers applies to owners of small craft.² Recognizing this general proposition as being applicable where the occupant of a motorboat has been injured in a collision or other accident,³ the courts have held that a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew.⁴ Moreover, an owner of a vessel breaches his or her legal duty of reasonable care by failing to take simple precautions to prevent foreseeable and serious injury.⁵ However, the duty of care owed by a shipowner to passengers depends upon the risk to the passenger, and a shipowner is not an insurer of its passengers' safety.⁶

The owner of a motorboat has a duty, in its operation, to exercise reasonable care for the safety of guests and to avoid exposing them unreasonably to danger by increasing the hazards of this method of travel.⁷ Also, a yacht owner owes a duty to passengers to avoid rendering yacht unseaworthy by overloading it.⁸

When the circumstances are that the boat owner is a passenger on the boat, an owner-passenger has no duty to keep a lookout unless, as with an ordinary passenger, the person running the boat is known to the passenger to be inattentive or careless in their operation, or the passenger has been jointly operating the boat.⁹ Thus, a speedboat's owner who is a passenger and not a joint operator of the boat when it collides with a ferry, who does not give negligent advice or negligently entrust the driver with the boat, is not liable for the driver's death resulting from the collision where the driver is an experienced boater, there is no evidence that the driver was inattentive or careless, and the owner did not direct the path that the driver was to take or undertake to act as a lookout.¹⁰

Where the party aboard is not an invited person or a business visitor, the owner owes that party no duty of affirmative care.¹¹ Furthermore, as to a mere licensee, the rules of care required for the safety of either gratuitous passengers or passengers for hire do not apply.¹² A motorboat owner, just as an owner or occupant of real property, owes a duty to a licensee only to refrain from wanton negligence or willful misconduct or from intentionally exposing the licensee to danger.¹³ Where an action for the death of a person aboard a motorboat, allegedly caused by the owner's negligence, is based upon a state statute, whether such person was an invitee or a licensee is governed by state law, and the owner may assert whatever distinction there may be under the state law between the duty owed to an invitee and that owed to a licensee.¹⁴ The general rule that the owner or operator of a motor vehicle owes to an invited gratuitous guest the duty of exercising ordinary or reasonable care to avoid injuring the guest is abrogated in a minority of states through so-called "guest" statutes, which limit the liability of the owner or operator for injury to or death of an invited gratuitous guest to cases where the harm arose from the owner or operator's intentional, or heedlessness or reckless disregard for the consequences, or willful or wanton misconduct, or gross negligence, or gross and wanton negligence, or intoxication.¹⁵

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Footnotes

- 1 [Am. Jur. 2d, Shipping § 358.](#)
- 2 [Van Berkum v. Christian, 175 Ill. App. 3d 62, 125 Ill. Dec. 134, 530 N.E.2d 52 \(1st Dist. 1988\).](#)
Under admiralty law, the owner of a ship in navigable waters owes a duty to its passengers to exercise reasonable care under the circumstances. [In re Nagler, 246 F. Supp. 3d 648 \(E.D. N.Y. 2017\)](#), appeal withdrawn, [2017 WL 3202547 \(2d Cir. 2017\)](#) (yacht).
- 3 [Cashell v. Hart, 143 So. 2d 559 \(Fla. 2d DCA 1962\).](#)
- 4 [In re Treanor, 144 F. Supp. 3d 381 \(E.D. N.Y. 2015\)](#) (yacht).
- 5 [In re Nagler, 246 F. Supp. 3d 648 \(E.D. N.Y. 2017\)](#), appeal withdrawn, [2017 WL 3202547 \(2d Cir. 2017\)](#) (yacht).
- 6 [In re Treanor, 144 F. Supp. 3d 381 \(E.D. N.Y. 2015\).](#)
- 7 [White's Estate v. Beauchamp, 348 Mich. 159, 82 N.W.2d 472, 63 A.L.R.2d 340 \(1957\).](#)
Owner and operator of private boat on lake had no duty to warn guest on boat that water surrounding boat was too shallow for diving, where affirmative duty to act for protection of another only arises when special relationship exists between parties and such special relationship does not exist between social host of private boat and guest on that boat. Thus, boat owner/operator was not liable for injuries to guest who dove from boat into shallow water. [Harper v. Herman, 499 N.W.2d 472 \(Minn. 1993\).](#)
- 8 [In re Treanor, 144 F. Supp. 3d 381 \(E.D. N.Y. 2015\)](#) (duty breached where yacht capsized after the owner loaded 27 passengers on yacht and eight passengers on the flybridge, far in excess of 10-passenger capacity).

- 9 Holzhauer v. Golden Gate Bridge Highway & Transportation District, 899 F.3d 844 (9th Cir. 2018).
10 Holzhauer v. Golden Gate Bridge Highway & Transportation District, 899 F.3d 844 (9th Cir. 2018).
11 Gunnarson v. Robert Jacob, Inc., 94 F.2d 170 (C.C.A. 2d Cir. 1938).
12 Hogan v. Hellman, 7 F.2d 949 (S.D. Cal. 1925).
13 Emerson v. Holloway Concrete Products Co., 282 F.2d 271 (5th Cir. 1960) (applying Florida law).
14 Emerson v. Holloway Concrete Products Co., 282 F.2d 271 (5th Cir. 1960).
15 Am. Jur. 2d, Automobiles and Highway Traffic § 551.

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12 Am. Jur. 2d Boats and Boating § 39

American Jurisprudence, Second Edition | May 2021 Update

Boats and Boating

Sonja Larsen, J.D.

V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 39. Permissive use of motorboat; applicability of “family purpose” doctrine

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

Forms

Forms relating to the family purpose doctrine, see Am. Jur. Pleading and Practice Forms, Boats and Boating [\[Westlaw® Search Query\]](#)

A vessel owner is liable to an injured party under the tort of negligent entrustment if it is shown that the vessel owner had knowledge or privity of the operator's acts of negligence.¹ Recovery from an owner who allows another to operate a motorboat that strikes a swimmer may be denied in the absence of a showing that the operator was incompetent or that the owner knew of that incompetency.² In the absence of statute, an owner who was not in a motorboat at the time it collides with another boat, while being negligently operated by a gratuitous bailee, is not liable for damage to the other boat.³ However, liability may be

warranted in cases where the owner supplied to a minor a boat that the owner knew would be dangerous to others, without reason to believe that the minor realized the risks involved and without warning the minor of them.⁴

To establish liability for an injury caused by a motorboat under the family purpose doctrine, the plaintiff must prove (1) that the vehicle was owned or controlled by the defendant, (2) that the vehicle was maintained by the defendant for the use and benefit of members of her or his family, (3) that the vehicle was being used at the time of the incident by a person whom the defendant was under a legal obligation to support, and (4) that the person using the vehicle was doing so pursuant to a family purpose.⁵ Motorboats that have been permissively but negligently operated by the owner's minor child are not covered by the “family car” or “family purpose” doctrine, under which the owner of an automobile purchased for family pleasure is charged with liability for injuries negligently inflicted by the automobile while it is being used by members of the family for their own pleasure.⁶

A husband is not vicariously liable, pursuant to the family purpose doctrine, for a water skier's death after being struck by a motorboat he jointly owns with his wife, while the wife was operating the boat, although the boat is being operated pursuant to a family purpose at the time of the accident, where the wife is a joint owner of the boat, not acting as her husband's agent, neither spouse has greater rights to the boat to the exclusion of the other, and the husband cannot either give or deny permission to the wife to use the boat.⁷ However, the family purpose doctrine may apply in an action for the death of a water skier killed when run over by a boat driven by the owner's married daughter.⁸

Motorboats have been declared to be dangerous instrumentalities under some state statutes.⁹

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Footnotes

- 1 [Wynne v. Trotter](#), 46 So. 3d 678 (La. Ct. App. 4th Cir. 2010), writ denied, 49 So. 3d 892 (La. 2010) (holding that a vessel is also liable, in rem for maritime collisions caused by the fault of its compulsory pilot).
- 2 [Williams v. McSwain](#), 248 N.C. 13, 102 S.E.2d 464 (1958).
Individuals injured in boating accident while boat was being driven by owner's brother could not recover against owner on theory of negligent entrustment, as there was no testimony that brother was intoxicated at time of accident, and testimony that earlier in day owner and brother had been “tearing up the river” was insufficient to show that owner had actual knowledge of pattern or habit of recklessness by brother in operation of boat. [Gunn v. Booker](#), 259 Ga. 343, 381 S.E.2d 286 (1989).
- 3 [Florenzie v. Fey](#), 26 Misc. 2d 295, 205 N.Y.S.2d 91 (Dist. Ct. 1960).
The owner of a motorboat was not liable for injuries to a swimmer where there was no question of agency or employment, the owner was not in the boat when the accident occurred and had not given the operator permission to use the boat, and the statute covering civil liability of owners of motor vehicles did not apply. [Torrez v. Willett](#), 366 Mich. 465, 115 N.W.2d 393 (1962).
- 4 [Mikel v. Aaker](#), 256 Minn. 500, 99 N.W.2d 76 (1959).
- 5 [Griffith v. Kuester](#), 780 F. Supp. 2d 536 (E.D. Ky. 2011) (applying Kentucky law).
- 6 [Grindstaff v. Watts](#), 254 N.C. 568, 119 S.E.2d 784 (1961).
In personal injuries action brought by passenger in motorboat against owner of second motorboat, family purpose doctrine did not apply, although member of family was present in second boat at time of accident, where that family member was at no time permitted to drive boat and owner at no time relinquished control of boat to that family member. [Quattlebaum v. Wallace](#), 156 Ga. App. 519, 275 S.E.2d 104 (1980).
- 7 [Griffith v. Kuester](#), 780 F. Supp. 2d 536 (E.D. Ky. 2011) (applying Kentucky law).
- 8 [Sanders v. Griffin](#), 134 Ga. App. 689, 215 S.E.2d 720 (1975).
- 9 [Cashell v. Hart](#), 143 So. 2d 559 (Fla. 2d DCA 1962).

12 Am. Jur. 2d Boats and Boating § 40

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Boats and Boating

Sonja Larsen, J.D.

V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 40. Proximate cause in injuries arising from motorboat mishap; concurrent negligence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#) 79 to 81(1), 82, 83, 85, 166(3)

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[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

The ordinary principles of proximate cause have been applied in cases involving the liability of a motorboat owner or operator for injuries or damage, the courts recognizing at least by implication that the owner or operator is not liable or chargeable with mutual fault absent a showing that the owner's misconduct contributed to producing the injuries or damage.¹ Thus, a jury question may be presented whether the owner of a motor boat negligently entrusted the vessel to an incompetent operator so as to be liable to a swimmer for injuries sustained when struck by the boat while it was on lease to others.²

To establish proximate causation, the plaintiff must prove that the defendant's negligent conduct was a substantial factor in causing the plaintiff's injury; the plaintiff need only prove that it was more likely than not that the defendant's conduct caused the injury.³

Under the comparative fault doctrine in maritime law, the claimant need not establish that the negligence of the owner of the vessel is the sole cause of the injury.⁴ Instead, the claimant in a maritime negligence case must demonstrate that the negligence of the owner of the vessel constituted a substantial factor in producing the injury,⁵ or that the owner's negligence was the "cause-

in-fact" or "but-for" cause of the injury.⁶ The Shipowners Limitation of Liability Act,⁷ limits a ship owner's liability only when the owner is sued for the acts of the master or crew done without the owner's privity or knowledge.⁸

The general principle that where an injury results from two separate and distinct acts of negligence committed by different persons operating concurrently, both such acts are regarded as the proximate cause of the injury and recovery can be had against either or both tortfeasors has also been recognized in actions for injuries resulting from a collision between a motorboat and another vessel,⁹ or from the concurring negligence of the operators of two motorboats.¹⁰

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Footnotes

- 1 [Rogers v. Saeger](#), 247 F.2d 758 (10th Cir. 1957) (collision with other boat); [White's Estate v. Beauchamp](#), 348 Mich. 159, 82 N.W.2d 472, 63 A.L.R.2d 340 (1957) (capsizing).
As to proximate cause, generally, see [Am. Jur. 2d, Negligence §§ 409 to 424](#).
As to causation, generally, in particular circumstances of injury or damage, see §§ [43](#) to [50](#).
- 2 [Boland v. Suncoast Rent-A-Scooter, Inc.](#), 439 So. 2d 916 (Fla. 2d DCA 1983).
While maritime law recognizes the tort of negligent entrustment, such a tort requires that the boat owner knew or should have known that the person to whom the boat was entrusted was likely to use it in a dangerous manner. [Regan v. Starcraft Marine LLC](#), 719 F. Supp. 2d 690 (W.D. La. 2010), judgment aff'd, 418 Fed. Appx. 310 (5th Cir. 2011).
- 3 [Shahinian v. McCormick](#), 59 Cal. 2d 554, 30 Cal. Rptr. 521, 381 P.2d 377 (1963) (abrogated on other grounds by, [Avila v. Citrus Community College Dist.](#), 38 Cal. 4th 148, 41 Cal. Rptr. 3d 299, 131 P.3d 383, 208 Ed. Law Rep. 606 (2006)).
- 4 [In re Nagler](#), 246 F. Supp. 3d 648 (E.D. N.Y. 2017), appeal withdrawn, 2017 WL 3202547 (2d Cir. 2017).
- 5 [In re Nagler](#), 246 F. Supp. 3d 648 (E.D. N.Y. 2017), appeal withdrawn, 2017 WL 3202547 (2d Cir. 2017).
- 6 [In re Treanor](#), 144 F. Supp. 3d 381 (E.D. N.Y. 2015).
- 7 For a discussion of this federal statute, entitled the "Shipowners Limitation of Liability Act," see [Am. Jur. 2d, Shipping §§ 369 to 420](#).
As to vessels within the coverage of the Act, see [Am. Jur. 2d, Shipping § 378](#).
- 8 [In re Nagler](#), 246 F. Supp. 3d 648 (E.D. N.Y. 2017), appeal withdrawn, 2017 WL 3202547 (2d Cir. 2017) (if the owner of a vessel, by prior action or inaction set into motion a chain of circumstances which may be a contributing cause even though not the immediate or proximate cause of a casualty, the right to limitation of liability is properly denied in a Limitation of Liability Act statute case).
- 9 [Ryan v. Dendinger, Inc.](#), 9 So. 2d 849 (La. Ct. App. 1st Cir. 1942).
- 10 [Nugen v. Hildebrand](#), 145 W. Va. 420, 114 S.E.2d 896 (1960).

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12 Am. Jur. 2d Boats and Boating § 41

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Boats and Boating

Sonja Larsen, J.D.

V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 41. Effect of violation of statute, ordinance, or regulation in motorboat injury cases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

Generally, the disregard of any obligatory statutory rule of navigation is a fault that renders the offending vessel liable for a collision directly caused or contributed to thereby, but it does not fix her with responsibility as a matter of law, and hence if it affirmatively appears that the fault had nothing to do with the collision, the nonobservance of the rule becomes immaterial.¹ This general principle has been applied to motorboats with respect to collisions with other vessels in finding that certain statutory violations by the motorboat constituted at least evidence of negligence, such as the context of being anchored without the required lights,² operating without required running lights³ or failing to keep out of the way of a privileged vessel,⁴ failing to maintain a proper lookout,⁵ failing to turn or slow down to avoid the collision⁶ or operating at excessive or unsafe speed.⁷

In some instances, however, a motorboat's violation of a local ordinance prescribing speed limits may constitute negligence per se with respect to a collision with another boat.⁸ Similarly, the violation of a statute prohibiting excessive speed or driving a motorboat while intoxicated may be negligence per se.⁹

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Footnotes

- 1 [Rogers v. Saeger](#), 247 F.2d 758 (10th Cir. 1957); [Davis v. The Esso Delivery No. 13](#), 100 F. Supp. 285 (D. Md. 1951).
- 2 [Rogers v. Saeger](#), 247 F.2d 758 (10th Cir. 1957); [Davis v. The Esso Delivery No. 13](#), 100 F. Supp. 285 (D. Md. 1951).
- 3 [Chimene v. Dow](#), 104 F. Supp. 473 (S.D. Tex. 1952).
- 4 [Connolly v. the Ace](#), 164 F.2d 86 (C.C.A. 2d Cir. 1947).
- 5 [Stevens v. U.S. Lines Co.](#), 187 F.2d 670 (1st Cir. 1951).
- 6 [Petition of Robertson](#), 163 F. Supp. 242 (D. Mass. 1958).
- 7 [Petersen v. Head Const. Co.](#), 367 F. Supp. 1072 (D.D.C. 1973).
- 8 [Dickey v. Thornburgh](#), 82 Cal. App. 2d 723, 187 P.2d 132 (4th Dist. 1947); [Ellis v. Horn](#), 67 Ohio L. Abs. 494, 120 N.E.2d 893 (Ct. App. 7th Dist. Mahoning County 1953).
- 9 [Britten v. Updyke](#), 357 Mich. 466, 98 N.W.2d 660 (1959).

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12 Am. Jur. 2d Boats and Boating § 42

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Boats and Boating

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

A. In General

§ 42. Applicability of respondeat superior to motorboat owners in tort cases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

The rule of respondeat superior, that a principal or employer is liable for the tortious acts of an agent or employee within the course and scope of the agent's or servant's employment is recognized generally in maritime cases,¹ and has been applied to motorboat owners in imposing either full liability² as well as in exonerating the motorboat owner from liability.³

There is a question of fact as to whether a motorboat owner is vicariously liable under the doctrine of respondent superior for the operator's alleged negligence where the court cannot determine the extent, if any, of the owner's right to control the operator.⁴

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Footnotes

¹ [Am. Jur. 2d, Shipping](#) §§ 199, 355.

² [Loc-Wood Boat & Motors, Inc. v. Rockwell, 245 F.2d 306 \(8th Cir. 1957\)](#) (overruled on other grounds by, [Three Buoys Houseboat Vacations U.S.A. Ltd. v. Morts, 921 F.2d 775 \(8th Cir. 1990\)](#)).

3 [Petition of Vest](#), 116 F. Supp. 901 (N.D. Cal. 1953).

4 [Dewitt v. Poovey](#), 111 A.D.3d 540, 976 N.Y.S.2d 30 (1st Dep't 2013) (the court noting that it was unclear whether the operator was an employee or an independent contractor).

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

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Research References

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A.L.R. Index, Pleasure Boats

A.L.R. Index, Yachts

West's A.L.R. Digest, [Shipping](#)  166(.5), 166(1), 166(3)

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Boats and Boating

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 43. Liability for collision of motorboat with other vessels; both vessels under navigation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  166(.5), 166(1), 166(3)

Trial Strategy

[Negligent Operation of Pleasure Boat](#), 43 Am. Jur. Proof of Facts 2d 395

[Motorboat Accident Litigation](#), 7 Am. Jur. Trials 1

Forms

Forms relating to swimmers, and hit by motorboats, generally, see Am. Jur. Pleading and Practice Forms, Boats and Boating
[\[Westlaw® Search Query\]](#)

In a number of cases involving a collision between a motorboat and another vessel, the evidence was sufficient to support findings of actionable negligence of the motorboat owner or operator or of mutual fault, in steering or handling;¹ in failing to have proper lights² or failing to have proper lights and to keep a proper lookout;³ or in handling, as well as in other respects.⁴ However, in other cases the evidence was insufficient to support the charges of negligence or mutual fault against the owner or operator of a motorboat,⁵ or disclosed that the motorboat was being properly operated at the time of the collision.⁶ Moreover,

even a negligent motorboat owner or operator is not liable or subject to apportionment of damages if the negligence was not the proximate cause of the collision.⁷

A pleasure boat passenger may fail to show liability of the pleasure boat owner on the theory of negligence per se for failing to maintain a seaworthy vessel that collides with the boat causing injuries to the passenger.⁸

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Footnotes

- 1 [Kosnac v. the Norcuba](#), 243 F.2d 890 (2d Cir. 1957); [Petition of Robertson](#), 163 F. Supp. 242 (D. Mass. 1958) (motorboat which crossed cabin cruiser's bow without turning or slowing down; mutual fault).
- 2 [The Verona](#), 65 F.2d 714 (C.C.A. 4th Cir. 1933).
- 3 [Chimene v. Dow](#), 104 F. Supp. 473 (S.D. Tex. 1952).
- 4 [Petition of H. & H. Wheel Service](#), 219 F.2d 904 (6th Cir. 1955).
Evidence was sufficient to support guilty verdict in bench trial on issues of criminal negligence and recklessness in connection with boat collision in which defendant's boat hit smaller boat, killing one person and seriously injuring another; due to planing, bow of defendant's boat was up in air, blocking his view as boat traveled distance equal to four football field lengths, at 30 miles per hour, prior to striking other boat. [State v. Gorman](#), 648 A.2d 967 (Me. 1994).
- 5 [Petition of H. & H. Wheel Service](#), 219 F.2d 904 (6th Cir. 1955); [Mays v. The Eleanor Marie](#), 103 F. Supp. 271 (E.D. N.C. 1952) (yacht which collided with fishing boat in fog).
- 6 [Norfolk, Baltimore and Carolina Line v. Yachts, Inc.](#), 226 F.2d 855 (4th Cir. 1955); [Dion v. U.S.](#), 199 F. Supp. 705 (D. Me. 1961); [Chimene v. Dow](#), 104 F. Supp. 473 (S.D. Tex. 1952).
- 7 [Rodi v. Dean](#), 138 F.2d 309 (C.C.A. 7th Cir. 1943); [The Aurora](#), 64 F. Supp. 502 (E.D. La. 1945), judgment aff'd, 153 F.2d 224 (C.C.A. 5th Cir. 1946).
- 8 [Vinson v. Cobb](#), 501 F. Supp. 2d 1125 (E.D. Tenn. 2007).

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Boats and Boating
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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 44. Liability for collisions of motorboat with other vessels; both vessels under navigation—Motorboat in motion and moored vessel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  [166\(.5\)](#), [166\(1\)](#), [166\(3\)](#)

Motorboats that have struck an anchored or moored vessel while being navigated may be negligent or mutually at fault for not maintaining a proper lookout.¹

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Footnotes

- ¹ [Rogers v. Saeger](#), 247 F.2d 758 (10th Cir. 1957); [Nemec v. Polley](#), 129 Cal. App. 2d 453, 277 P.2d 76 (4th Dist. 1954).

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Boats and Boating

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 45. Liability where motorboat collides with piers or other structures, or with obstructions in water

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  [166\(.5\)](#), [166\(1\)](#), [166\(3\)](#)

A.L.R. Library

[Liability of electric power company for injury or death resulting from contact of crane, derrick or other movable machine with electric line, 69 A.L.R.2d 93](#)

Trial Strategy

[Negligent Operation of Pleasure Boat, 43 Am. Jur. Proof of Facts 2d 395](#)
[Motorboat Accident Litigation, 7 Am. Jur. Trials 1](#)

A motorboat that strikes an inadequately lighted pier at night may be negligent if its experienced operator, although knowing he or she was near a pier despite not seeing any lights, continues without slowing down until it is too late to avoid the collision.¹ Similarly the navigator of a pleasure craft may be negligent in maintaining speed in the direction of breakwater at night after becoming visually disoriented and not altering course to allow for a worst-case scenario.²

Recovery has been allowed for damage to a pier after a boat moored to it was struck by a motorboat that was not keeping a proper lookout.³ Recovery has been allowed for the injuries and deaths of motorboat passengers resulting when the boat struck an ice floe and sank through the master's negligence in running through ice in disregard of the owner's instructions.⁴ Negligence may be established where the operator is legally intoxicated, was traveling down river in fading light and without running lights, and was following the shoreline too closely and had no passengers on the lookout for any danger.⁵

In an action for wrongful death of a passenger who is thrown from a pleasure boat after it made a sudden, sharp turn, a finding of negligence may depend on whether the motion of the vessel was caused by the operator or, instead, by striking an object in the water.⁶

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Footnotes

- 1 [Niepert v. Cleveland Elec. Illuminating Co., 241 F.2d 916, 2 Ohio Op. 2d 307, 76 Ohio L. Abs. 75 \(6th Cir. 1957\).](#)
- 2 [Corporacion Insular de Seguros v. U.S., 646 F. Supp. 1230 \(D.P.R. 1986\).](#)
- 3 [Nemec v. Polley, 129 Cal. App. 2d 453, 277 P.2d 76 \(4th Dist. 1954\).](#)
- 4 [The Linseed King, 285 U.S. 502, 52 S. Ct. 450, 76 L. Ed. 903 \(1932\)](#) (proximate cause established).
- 5 [Blackshear v. Allstate Ins. Co., 647 So. 2d 589 \(La. Ct. App. 3d Cir. 1994\)](#) (traveling at approximately 40 to 50 miles per hour).
- 6 [Hall v. Robinson, 495 F. Supp. 123 \(E.D. Tenn. 1980\).](#)

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 46. Liability where motorboat strikes swimmers or bathers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  166(.5), 166(1), 166(3)

A.L.R. Library

[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

A motorboat operator is held to the care that a reasonably prudent person would exercise under the circumstances in avoiding collisions with swimmers,¹ and must maintain such lookout as a reasonably prudent person would exercise to discover and avoid injury to others lawfully using the waters, although the duty is limited to objects on or above the surface of the water.²

An injured swimmer is entitled to a negligent supervision instruction, in an action against a powerboat owner who lets the inexperienced driver operate a boat at an unsafe speed in a river with heavy boat and ski traffic without providing significant direction.³ Brief instructions given by an owner and passenger of a personal watercraft to a first-time driver of the watercraft are adequate, and thus neither the owner nor the passenger breaches a duty of care owed to a driver who drowns when the watercraft floats away, if the driver was able to comprehend ordinary hazards, could understand and remember short and simple instructions, and had a license to operate an automobile.⁴ In an action against the operator of a houseboat by a swimmer who is caught in the propeller, negligence may be found if the operator put the boat in reverse while the swimmer was near the

propellers.⁵ Whether a swimmer who is caught in a boat propeller and severely injured assumed the risk by swimming towards the rear of the boat as it was attempting to dock is a question for the jury.⁶

The owner or operator of a motorboat that strikes and injures a swimmer or bather may be liable for failing to keep a proper lookout⁷ or for both failing to keep a proper lookout and negligent handling of the boat,⁸ as where a swimmer is struck by an outboard motorboat after the defendant carelessly operates the boat at a place where he or she knew there were bathers present.⁹

A swimmer may be denied recovery against a motorboat owner for injuries received when struck by the boat as it was operated by another with the owner's permission, if there was no evidence that the owner knowingly entrusted the boat to an incompetent operator.¹⁰ A swimmer, who was struck by a powered pleasure boat with a cracked windshield, did not have sufficient evidence to show that the boat's owner was guilty of negligent entrustment of the boat in loaning it to its employee by reason of the cracked windshield rendering the boat defective, where there was no evidence to show that the crack in the windshield materially interfered with the vision of the operator of the boat.¹¹

If a swimmer is killed after being struck by a boat operated in a careless manner by a third party, the fact that an outboard motor lacked a propeller guard or shield does not render the motor defective, and thus liability may not be established under either negligence or strict liability theories.¹²

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Footnotes

- 1 [Malmin v. Sternheim](#), 202 Ill. App. 214, 1916 WL 2592 (1st Dist. 1916).
- 2 [Williams v. McSwain](#), 248 N.C. 13, 102 S.E.2d 464 (1958).
- 3 [Tillman ex rel. Migue v. Singletary](#), 865 So. 2d 350 (Miss. 2003).
- 4 [Weaver v. Trackey](#), 272 A.D.2d 705, 707 N.Y.S.2d 530 (3d Dep't 2000).
- 5 [Hightower v. Cox](#), 204 Ga. App. 105, 418 S.E.2d 613 (1992).
- 6 [Hightower v. Cox](#), 204 Ga. App. 105, 418 S.E.2d 613 (1992).
- 7 [Schumacher v. Cooper](#), 850 F. Supp. 438 (D.S.C. 1994).
As to striking a fallen water skier, see § 49.
As to liability of bathing or other resort operators for injuries to swimmers struck by motorboats, see § 64.
- 8 [Schoremoyer v. Barnes](#), 190 F.2d 14 (5th Cir. 1951).
- 9 [Torrez v. Willett](#), 366 Mich. 465, 115 N.W.2d 393 (1962).
- 10 [Strom V Anderson](#), 114 F. Supp. 767 (W.D. N.Y. 1953).
- 11 [Vann v. Willie](#), 284 Md. 182, 395 A.2d 492, 98 A.L.R.3d 1121 (1978).
- 12 [Fitzpatrick v. Madonna](#), 424 Pa. Super. 473, 623 A.2d 322 (1993).
As to products liability concerning boating, see § 66.

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Boats and Boating
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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 47. Liability for capsizing or swamping of motorboat

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#) 166(.5), 166(1)

Trial Strategy

[Negligent Operation of Pleasure Boat](#), 43 Am. Jur. Proof of Facts 2d 395

[Motorboat Accident Litigation](#), 7 Am. Jur. Trials 1

Where a guest or passenger has been injured or killed in the capsizing of a motorboat, recovery has been allowed against the owner for negligence in taking an overloaded boat into open sea,¹ or in attempting a sudden turn in an overloaded boat while proceeding at an excessive speed.² However, the mere fact that a boat capsizes is not enough to establish negligence,³ and recovery has been denied in the absence of evidence as to the cause of the capsizing.⁴ Moreover, liability for the death of a passenger who drowns in the swamping of a motorboat is improper if the passenger assumed the risk of riding in a boat that the passenger knew was overloaded and lacked adequate lifesaving equipment.⁵ A recovery is similarly unwarranted for the death by drowning of an occupant of an outboard motorboat allegedly swamped by the defendant's larger and more powerful outboard runabout, if the evidence is insufficient to identify the offending craft as the defendant's or to establish the proximate cause of the accident.⁶

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Footnotes

- 1 [In re Treanor](#), 144 F. Supp. 3d 381 (E.D. N.Y. 2015).
- 2 As to liability of municipality for injuries resulting from capsizing of motorboat in public park, see [§ 65](#).
- 3 [White's Estate v. Beauchamp](#), 348 Mich. 159, 82 N.W.2d 472, 63 A.L.R.2d 340 (1957).
- 4 [The Nereid](#), 40 F. Supp. 736 (D.N.J. 1941) (26-foot party fishing boat overturned by unusual wave that could not possibly have been anticipated).
- 5 [Charlton v. Lovelace](#), 351 Mo. 364, 173 S.W.2d 13 (1943) (also holding that *res ipsa loquitur* doctrine could not be applied).
- 6 [Tipton v. Day](#), 79 Ohio L. Abs. 12, 154 N.E.2d 174 (Ct. App. 10th Dist. Franklin County 1958).
- [Byrd v. Belcher](#), 203 F. Supp. 645 (E.D. Tenn. 1962).

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 48. Liability for motorboat occupant's falling overboard; injuries from motion of boat or water

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  [166\(.5\)](#), [166\(1\)](#), [166\(3\)](#)

A.L.R. Library

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

Trial Strategy

[Liability for Negligent Operation of Ski Boat, 36 Am. Jur. Proof of Facts 2d 525](#)

A motorboat owner may be liable under a variety of circumstances for injuries to, or the death of, an occupant who falls overboard, as where a guest on a motorboat towing a water skier is injured when, while sitting on the gunwale, the guest is thrown overboard as the boat makes a sharp turn, and the owner who was operating the boat is negligent for failing to warn the guest that the boat was about to make the turn.¹ Similarly, if a child passenger riding on the forward deck of a motorboat is thrown off and sustains fatal injuries when the boat turns while proceeding at high speed, the owner may be liable for the negligence of a spouse, who was operating the boat, in failing to see that the child was in a safe place.² The owner of a party

fishing boat may be liable for the negligent failure of the crew to warn a passenger standing in a swordfish pulpit, when the boat hits a stretch of rough water and the passenger falls overboard.³ Similarly, a hotel guest who is taken into rough waters for a fishing trip in an outboard motorboat owned by a hotel and operated by a guide, and who is injured after a high wave hits may obtain recovery against the hotel.⁴ However, a passenger on an anchored boat who is injured when falling on the deck as the boat makes a sudden movement, may not recover unless the sudden movement was due to negligence of the owner or crew.⁵

If a passenger suffers severe injuries after falling off the rear of a two-seater watercraft, an owner/operator of the craft has no duty to call to the attention of the passenger warnings printed on it and in the owner's manual, since in the absence of special conditions, the owner/operator, as a coparticipant with the passenger, has no duty further than refraining from altering or removing the warning label.⁶

Whether a passenger in a boat that was being driven at excessive speed over rough water has failed to avoid the consequences of the driver's negligence by not moving to a more stable area of the boat or gaining a foothold more securely to the perch, is a question for the jury in a negligence action arising from personal injuries sustained when thrown violently into the air.⁷

However, in some cases recovery for the injuries or death of a person who falls overboard has been denied on the ground that there is insufficient evidence of negligence in handling the boat or in attempting a rescue,⁸ even where the sea is very rough in the vicinity of the accident and the owner does not consult forecasts, tides, moon-phase, and charts.⁹

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Footnotes

- 1 [Isaacson v. Jones](#), 216 F.2d 599 (9th Cir. 1954).
- 2 [Petition of Liebler](#), 19 F. Supp. 829 (W.D. N.Y. 1937).
- 3 [Parmelee v. Hiller](#), 129 Conn. 489, 29 A.2d 586 (1942) (under doctrine of respondeat superior).
- 4 [Seaboard Properties, Inc. v. Bunchman](#), 278 F.2d 679 (5th Cir. 1960) (applying Florida law).
- 5 [Lockhart v. Martin](#), 159 Cal. App. 2d 760, 324 P.2d 340 (2d Dist. 1958).
- 6 [Ford v. Polaris Industries, Inc.](#), 139 Cal. App. 4th 755, 43 Cal. Rptr. 3d 215 (1st Dist. 2006).
- 7 [Brown v. Williams](#), 191 Ga. App. 147, 381 S.E.2d 308 (1989).
- 8 [The America](#), 35 F. Supp. 413 (S.D. N.Y. 1940) (action for death of passenger on party fishing boat); [Leslie v. Robinson](#), 267 A.D. 965, 46 N.Y.S.2d 538 (2d Dep't 1944), (Note: Decisions combined in N.Y.S.2d) and decision amended on other grounds, 267 A.D. 967, 1944 WL 27021 (2d Dep't 1944) and judgment aff'd, 293 N.Y. 911, 60 N.E.2d 35 (1944) (action for death of passenger on sightseeing launch).
- 9 [In re Cornfield](#), 365 F. Supp. 2d 271 (E.D. N.Y. 2004), judgment aff'd, 156 Fed. Appx. 343 (2d Cir. 2005).

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Boats and Boating

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 49. Motorboat owner or operator's liability for waterskiing injury

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  166(.5), 166(1), 166(3)

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[Liability for injuries to, or death of, water-skiers](#), 34 A.L.R.5th 77

Forms

Forms relating to swimmers and water skiers, generally, see Am. Jur. Pleading and Practice Forms, Boats and Boating
[\[Westlaw® Search Query\]](#)

Generally, a motorboat with a water-skier in tow, maintaining a fixed course, has the right of way over a motorboat planning to cross the “channel” within which the skier is running, which boat is obligated to stay away from that “channel.”¹ However, a water-skier assumes the risk of negligent conduct by other participants in the activity, such as the driver of the towing boat.²

Recovery has been recognized for injuries sustained by a water skier when, while being towed by one motorboat, the skier fell and was struck by another motorboat, operated by the defendant, which had been pursuing a parallel course to the rear.³

A state statute that renders unenforceable an automobile policy's provisions which exclude liability for injury inflicted on the insured's family members does not apply to pleasure boat coverage issued to the insured who drives the boat over a waterskiing child of the insured.⁴ It is a jury question whether it could be implied from the fact that a water skier had, on two occasions prior to an accident, skied toward and even into a boat which eventually struck the skier and whether such an event was an unforeseeable superseding event absolving the operator of the other boat of liability.⁵

A teenage boat operator was negligent where he permitted the plaintiff, a 14-year-old inexperienced water skier, seated in the boat, to pull a ski rope in from the water, where the operator, knowing plaintiff was not looking at him but toward the rear of the boat, operated the boat at a rapid rate of speed until plaintiff, fearing he would be pulled from the boat and injured by the propeller when the rope pulled on his arm, jumped over the side of the boat and was injured.⁶

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Footnotes

- 1 [Press v. Lyford, 36 Cal. App. 3d 986, 111 Cal. Rptr. 817 \(2d Dist. 1974\).](#)
In action for wrongful death of water skier who was struck and killed by motor boat operated by defendant, defendant's testimony that he drove his boat near shoreline with boats on both sides of him, some pulling skiers, at speed of 20-25 m.p.h., was sufficient evidence of negligence to preclude giving of "unavoidable accident" instruction, where evidence indicated lake was congested with boats and skiers, that defendant was about to leave lake, because he considered it dangerous, and that lake was rough which interfered with vision on water. [Del Vecchio v. Lund, 293 N.W.2d 474 \(S.D. 1980\).](#)
- 2 [Ford v. Gouin, 3 Cal. 4th 339, 11 Cal. Rptr. 2d 30, 834 P.2d 724, 34 A.L.R.5th 769 \(1992\).](#)
- 3 [Nugen v. Hildebrand, 145 W. Va. 420, 114 S.E.2d 896 \(1960\).](#)
For application of the last clear chance doctrine to waterskiing accidents, see § 59.
As to liability of resort operators for injuries to water skiers struck by motorboats, see § 64.
As to liability of county or other public body for injuries to water skier struck by motorboat on public waters, see § 65.
- 4 [West American Ins. Co. v. Yanchick, 105 F. Supp. 2d 856 \(N.D. Ill. 2000\).](#)
- 5 [Kersat v. Blazavich, 174 A.D.2d 810, 570 N.Y.S.2d 744 \(3d Dep't 1991\).](#)
- 6 [Stansbury v. Hover, 366 So. 2d 918 \(La. Ct. App. 1st Cir. 1978\).](#)

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

B. Particular Circumstances of Injury or Damage

§ 50. Owner or operator's liability for personal watercraft injury

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  166(.5), 166(1), 166(3)

A passenger's action to recover for injuries sustained in a collision of two leased personal watercrafts in navigable waters falls within the scope of the federal district court's admiralty jurisdiction.¹

Where two waverunners collide, in that the driver on the waverunner on which the passenger is riding fails to look behind him before making a left turn in contravention of the rental company's instructions, while the driver of the waverunner striking the plaintiff's craft fails to follow such instructions regarding distance and positioning of his waverunner, both drivers breach their duty of care, rendering them liable for the passenger's injuries.² Also, in a collision between two personal watercraft, in which the defendant's jet ski collides with a jet ski on which the plaintiff was riding after the plaintiff's jet ski veers into a 180-degree turn, no reasonable fact finder could conclude that defendant failed to keep a proper lookout if the defendant was aware of the unexpected turn and the plaintiff's location after the accident.³

A boat operator who witnesses a jet ski strike a tube being pulled by a boat, killing the tube rider may be found not within the "zone of danger," even though the jet ski was at one point coming directly toward the boat at a rapid speed, and thus the operator is precluded from recovering for the emotional distress.⁴

Observation:

Under federal maritime law, a passenger injured on a jet ski is permitted to sue the manufacturer of the jet ski for the full amount of damages, even though the jet ski's operator's negligence might have contributed to the passenger's injuries.⁵

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Footnotes

- 1 [DiNenno v. Lucky Fin Water Sports, LLC](#), 837 F. Supp. 2d 419 (D.N.J. 2011).
- 2 [DiNenno v. Lucky Fin Water Sports, LLC](#), 837 F. Supp. 2d 419 (D.N.J. 2011) (applying New Jersey law).
- 3 [Moore v. Matthews](#), 445 F. Supp. 2d 516 (D. Md. 2006).
- 4 [Catron v. Lewis](#), 271 Neb. 416, 712 N.W.2d 245 (2006).
- 5 [Sands v. Kawasaki Motors Corp. U.S.A.](#), 513 Fed. Appx. 847 (11th Cir. 2013).
As to comparative negligence and assumption of the risk, see §§ [54](#) to [60](#).

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

C. Limitation of Liability by Federal Statute

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

C. Limitation of Liability by Federal Statute

§ 51. Federal limitation on liability of motorboat owners; jurisdiction, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#) 203 to 205, 207

A.L.R. Library

[Comment Note.—Action for death caused by maritime tort within a state's territorial waters, 71 A.L.R.2d 1296](#)

[Who Constitutes "Owner" for Purposes of Limitation of Liability Act, 46 U.S.C.A. s30505\(a\), 89 A.L.R. Fed. 2d 583](#)

Trial Strategy

[Negligent Operation of Pleasure Boat, 43 Am. Jur. Proof of Facts 2d 395](#)

[Motorboat Accident Litigation, 7 Am. Jur. Trials 1](#)

Federal statutes governing limited liability authorize the limitation of a ship owner's imputed liability to the value of his or her interest in the vessel and its freight then pending.¹

The limitation of liability provisions² apply to pleasure boats,³ such as yachts.⁴ Specifically, a motorboat is a “vessel” within the meaning of the statute,⁵ as is a “jet ski.”⁶

A municipality may not avoid legal liability for a crash of its ferry into a maintenance pier, or to limit its liability under the Act⁷ to the value of the ferry, where the standard of reasonable care requires at least two crewmembers on watch in or near the pilothouse, and the municipality fails to enforce a policy that would meet that standard.⁸

The federal liability statute applies to injuries resulting from the explosion of a motorboat while it is being repaired or winterized on dry land in a storage shed or boathouse.⁹

Caution:

A federal district court will only have admiralty jurisdiction to hear a petition by a vessel owner for limitation of liability if it already has admiralty jurisdiction over the underlying claims that the petition seeks to limit.¹⁰ With respect to maritime tort claims, the test for determining admiralty jurisdiction concerns both the incident's location and its connection with maritime activity.¹¹ The location aspect is satisfied if the tort occurred on navigable water, while the connection aspect involves assessing the general features of the type of incident involved to determine whether the incident has a potentially disruptive impact on maritime commerce, and determining whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.¹² Because injury to a passenger who jumps from a recreational vessel on open navigable waters has a potentially disruptive effect on maritime commerce and because the general character of the activity giving rise to the incident—whether described as the transport and care of passengers on a vessel on navigable waters or the anchoring of a vessel without warning of the attendant dangers—bears a substantial relationship to traditional maritime activity, the federal court has admiralty jurisdiction for purposes of hearing a petition for shipowners limitation of liability in federal court.¹³ Since the federal statutes governing limited liability¹⁴ are coextensive in their operation with the whole territorial domain of that law, and extend to the ocean, the Great Lakes, the navigable rivers, and all other connecting public navigable waters of the United States,¹⁵ federal admiralty jurisdiction cannot be asserted over a vessel owner's claim for limitation of liability from tort claims arising out of an accident on a lake in which a tube rider was thrown from a tube being pulled by the owner's boat after the owner allegedly failed to slow the boat to a reasonable speed, where the lake is not a navigable waterway, even if it is possible to navigate along portions of the Illinois River upstream of the lake by small raft, canoe, or kayak.¹⁶ Similarly a motorboat owner may not raise the statute as a defense if the liability that is sought to limit arose out of an accident occurring on a body of water that is not a navigable water of the United States.¹⁷ Indeed, a waterway is "navigable," for purposes of establishing admiralty jurisdiction, provided that it is used or susceptible of being used as an artery of commerce, with "commerce" being defined, under admiralty jurisdiction, as activities related to the business of interstate or international shipping.¹⁸

In a case involving the death of a recreational boater occurring within state territorial waters, which are explicitly excluded from the reach of the Death on High Seas Act, state wrongful death and survival statutes are not displaced by a federal maritime rule of decision preventing recovery for loss of society, loss of support and services, loss of future earnings, and punitive damages.¹⁹

Letters provided by the attorneys of accident victims are insufficient to put a boat owner on notice that the victims were making a claim against the boat owner that exceeded the value of the boat and its pending cargo at the time the accident occurred, and thus are insufficient to start the running of the limitations period for a boat owner to file a petition to limit liability, where one letter states merely that the victim had suffered several injuries, including back injuries, and the other letter, though stating

that the victim had incurred substantial medical expenses, fails to explain what injuries were received or what was meant by substantial medical expenses.²⁰

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Footnotes

- 1 [Am. Jur. 2d, Shipping § 388.](#)
- 2 [46 U.S.C.A. §§ 30501 to 30512.](#)
- 3 [In re Complaint of Messina, 574 F.3d 119 \(2d Cir. 2009\); Definitive Marine Surveys Inc. v. Tran, 339 F. Supp. 3d 1292 \(M.D. Fla. 2018\); Complaint of Dillahey, 733 F. Supp. 874 \(D.N.J. 1990\).](#)
For a discussion of the Shipowners Limitation of Liability Act where large vessels are involved, generally, see [Am. Jur. 2d, Shipping §§ 369 to 383.](#)
- 4 [Sisson v. Ruby, 497 U.S. 358, 110 S. Ct. 2892, 111 L. Ed. 2d 292 \(1990\)](#) (damages to neighboring vessels at marina caused by fire on yacht).
Company that sold pleasure craft to son of injured party was no longer “owner” of craft, where company had complete absence of title or any practical control over vessel at time of accident. [Marine Recreational Opportunities, Inc. v. Berman, 15 F.3d 270 \(2d Cir. 1994\).](#)
- 5 [Petition of Reading, 169 F. Supp. 165 \(N.D. N.Y. 1958\), decree aff’d by, 271 F.2d 959 \(2d Cir. 1959\).](#)
- 6 [Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225 \(11th Cir. 1990\).](#)
- 7 [46 U.S.C.A. § 30505\(b\).](#)
- 8 [In re City of New York, 522 F.3d 279 \(2d Cir. 2008\).](#)
- 9 [Petition of Colonial Trust Co., 124 F. Supp. 73 \(D. Conn. 1954\).](#)
- 10 [In re Petition of Germain, 824 F.3d 258 \(2d Cir. 2016\).](#)
- 11 [Matter of Christopher Columbus, LLC, 872 F.3d 130 \(3d Cir. 2017\).](#)
- 12 [Matter of Christopher Columbus, LLC, 872 F.3d 130 \(3d Cir. 2017\)](#) (holding that altercation between passengers on yacht in process of docking, which gave rise to underlying negligence action, had potential to disrupt maritime commerce, and therefore district court had admiralty subject matter jurisdiction over shipowners limitation action).
- 13 [In re Petition of Germain, 824 F.3d 258 \(2d Cir. 2016\).](#)
However, in an earlier case in the circuit, where the defendants attempted to remove a case from state court by filing a petition in the removed case to limit liability, the federal court held it had no jurisdiction because a vessel owner could not file a petition for exoneration or limitation in a pending action; instead, where an admiralty action for damages or liability has been initiated in state court, an exoneration or limitation of liability proceeding could only be initiated through the filing of a separate action in federal district court. [Speranza v. Leonard, 925 F. Supp. 2d 266 \(D. Conn. 2013\)](#) (man ejected from power boat and drowned during rough seas).
- 14 [46 U.S.C.A. §§ 30501 to 30512.](#)
- 15 [Am. Jur. 2d, Shipping § 377.](#)
- 16 [Matter of Riley, 365 F. Supp. 3d 1195 \(N.D. Okla. 2019\).](#)
- 17 [Petition of Keller, 149 F. Supp. 513 \(D. Minn. 1956\).](#)
In a proceeding by a speedboat owner to limit liability to value of the boat pursuant to federal statute, the district court would dismiss the proceeding for absence of subject matter jurisdiction due to the lack of navigable water prerequisite, where the incident occurred on a river which had never been used for commercial purposes, was not in fact navigable for commercial purposes at place of accident, and where the river at place of accident was not reasonably susceptible of use for commercial navigation. [Marroni v. Matey, 492 F. Supp. 340 \(E.D. Pa. 1980\).](#)
- 18 [Moore v. Traina Enterprises, Inc., 15 F. Supp. 3d 1354 \(N.D. Ga. 2013\)](#) (holding that inland body of water need not traverse state lines nor reach the ocean; serving as a link in the chain of maritime commerce is sufficient, though manufactured reservoir did not qualify).
- 19 [Calhoun v. Yamaha Motor Corp., U.S.A., 40 F.3d 622 \(3d Cir. 1994\), judgment aff’d, 516 U.S. 199, 116 S. Ct. 619, 133 L. Ed. 2d 578 \(1996\).](#)

12 Am. Jur. 2d Boats and Boating § 52

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Boats and Boating
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V. Liability of Motorboat Owners and Operators for Injuries or Damage

C. Limitation of Liability by Federal Statute

§ 52. Proceedings for limitation of liability of motorboat owners, and their effect on other proceedings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  209

The courts in cases involving motorboats have stated that the Shipowners Limitation of Liability Act¹ affords an opportunity for the determination of claims against a boat and its owner,² and that, looking to a complete disposition of what may be a “many-cornered controversy,” it applies to proceedings in rem against the boat, to proceedings in personam against the owner, and to cases of personal injury and death as well as of property damage.³

To commence a proceeding for exoneration or limitation of liability, the owner of a vessel may bring a civil action in a federal district court for limitation of liability within six months after a claimant gives the owner written notice of a claim.⁴ The six-month time period for filing a limitation of liability complaint by a boat owner as to the passenger's personal injury action accrues on the date of the passenger's complaint in state court, rather than at the time the boat owner receives the passenger's bill of particulars showing that the claim is greater than the value of the boat.⁵ After filing a petition to limit liability under Limitation of Liability Act, all claims concerning the vessel must thereafter be filed in federal court, which hears the case without a jury and determines whether the owner is liable and entitled to limit her liability.⁶

Once a complaint has been filed under the Limitation Act, the district court secures the value of the vessel or owner's interest, marshals claims, and enjoins the prosecution of other actions with respect to the claims.⁷ Once a court determines whether a vessel owner is liable and whether the owner may limit liability, the court then determines the validity of the claims, and if liability is limited, distributes the limited fund among the claimants.⁸ However, where a federal district court satisfies itself that a vessel owner's right to seek limitation will be protected, the decision to dissolve an injunction staying the state court proceeding is well within the court's discretion.⁹ State courts, with all of their remedies, may adjudicate claims against vessel owners so long as the vessel owner's right to seek limitation of liability is protected.¹⁰

While a federal court, even though it has denied a motorboat owner's petition for limitation of liability, has jurisdiction to retain the case and to settle all claims where the equities require it, this course is not a required one so that where the claimants desire to pursue common-law remedies in a state court and the right to limit liability, as conferred by statute, is not infringed, the federal court may, in its discretion, permit them to do so, particularly where to retain jurisdiction would deny the claimants their rights under the common-law remedies, including jury trials, without protecting any established right of the boat owner.¹¹

Practice Tip:

The statute that sets forth the filing deadline for a vessel owner to bring a civil action¹² in a district court is a nonjurisdictional mandatory claim-processing rule, and thus dismissal of the boat owners' action that seeks to limit liability for a boating accident, in which a minor child lost a finger, is not warranted for lack of jurisdiction based on the owners' asserted untimely filing.¹³ Also, to the extent that the plaintiff seeks remedies in state court pursuant to state and admiralty law for the plaintiff's spouse's death after being ejected from a power boat during rough seas, such claims—although they could have been brought in district court pursuant to the district courts' admiralty jurisdiction—are not subject to the limitation of liability statutes¹⁴ after the case is improperly removed to federal court, because the federal court is without jurisdiction to hear the action; the action could be properly brought in state court based on the concurrent jurisdiction of the state courts over admiralty claims.¹⁵

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Footnotes

- 1 46 U.S.C.A. §§ 30501 to 30512.
For a discussion of proceedings under the Shipowners Limitation of Liability Act, where large vessels are involved, see *Am. Jur. 2d, Shipping* §§ 394 to 420.
- 2 *Coryell v. Phipps*, 317 U.S. 406, 63 S. Ct. 291, 87 L. Ed. 363 (1943); *Rautbord v. Ehmann*, 190 F.2d 533 (7th Cir. 1951).
Lessor's complaint invoking special proceeding, under Limitation of Vessel Owner's Liability Act (LVOLA), in which lessee filed claim against lessor of recreational boat for injuries sustained in boating collision and third-party claim against lessor's insurer, who claimed that guarantor of lessee's insolvent personal liability insurer provided primary coverage, properly invoked federal admiralty jurisdiction, since collision occurred on navigable waters and had potential to disrupt maritime commerce, and activity giving rise to incident was substantially related to traditional maritime activity as it involved navigation of boats in navigable waters.
In re Aramark Leisure Services, 523 F.3d 1169 (10th Cir. 2008).
- 3 *Just v. Chambers*, 312 U.S. 383, 312 U.S. 668, 61 S. Ct. 687, 85 L. Ed. 903 (1941).
- 4 46 U.S.C.A. § 30511(a).
- 5 *In re Pinand*, 638 F. Supp. 2d 357 (S.D. N.Y. 2009).
- 6 *In re Pinand*, 638 F. Supp. 2d 357 (S.D. N.Y. 2009).
- 7 *Definitive Marine Surveys Inc. v. Tran*, 339 F. Supp. 3d 1292 (M.D. Fla. 2018).
- 8 *Definitive Marine Surveys Inc. v. Tran*, 339 F. Supp. 3d 1292 (M.D. Fla. 2018).
- 9 *In re Petition of Germain*, 824 F.3d 258 (2d Cir. 2016).

- 10 [In re Petition of Germain](#), 824 F.3d 258 (2d Cir. 2016) (holding that cases that involve limitation petitions
may proceed on dual tracks in state and federal court).
- 11 [Petition of Follett](#), 172 F. Supp. 304 (S.D. Tex. 1958).
- 12 [46 U.S.C.A. § 30511\(a\)](#).
- 13 [Definitive Marine Surveys Inc. v. Tran](#), 339 F. Supp. 3d 1292 (M.D. Fla. 2018).
- 14 [46 U.S.C.A. §§ 30501 to 30512](#).
- 15 [Speranza v. Leonard](#), 925 F. Supp. 2d 266 (D. Conn. 2013).

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12 Am. Jur. 2d Boats and Boating § 53

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

C. Limitation of Liability by Federal Statute

§ 53. Effect of motorboat owner's privity or knowledge on liability under the Limitation of Shipowners' Liability Act

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West's Key Number Digest

West's Key Number Digest, [Shipping](#)  208, 209(3)

A.L.R. Library

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

The primary purpose of the Federal Limitation of Shipowners' Liability Act¹ is to limit a vessel owners' liability for maritime accidents that occur without their privity or knowledge.² Thus, rather than being vicariously liable for the full extent of any injuries caused by the negligence of the captain or crew employed to operate a ship, the owner's liability is limited to the value of the ship unless the owner had privity or knowledge of the negligent acts.³ The courts in cases involving motorboat owners have recognized that the statute is intended only to reduce the imputed liability of boat owners arising out of an employer-employee or principal-agent relationship, and not the liability of the owner for his or her own acts of negligence,⁴ and, in accordance with the cases involving vessel owners generally, have construed privity and knowledge as meaning some personal participation by the owner in the fault or negligence which caused or contributed to the loss or injury, or actual knowledge, or means of knowledge, of which the owner is bound to avail him- or herself, of a condition likely to bring about loss unless proper means are used to prevent it.⁵ This rule is subject to modification in the case of a corporate owner of a motorboat, whose privity or knowledge must be that of an officer or agent, the question sometimes arising whether the particular officer's or agent's knowledge should be imputed to the corporation.⁶ Thus, the claim of a corporate owner and owner pro hac vice of a power boat that overturns and

injures passengers who then file a personal injury action, for exoneration from or limitation of liability will be denied summarily if the owner pro hac vice was in control of the boat and was the sole stockholder of the corporate owner, as the loss thus occurs with the privity or knowledge of the owner.⁷

The burden is on the owner to prove lack of privity or knowledge.⁸ Once the party opposing limitation of liability has proven conditions of unseaworthiness, the burden of proof shifts to the vessel owner to prove lack of privity or knowledge.⁹ Privity, like knowledge, turns on the facts of the particular case.¹⁰ Thus, in a number of cases a motorboat owner has been denied a limitation of liability where it was found, under the circumstances, that the loss, damage or injury was occasioned with the owner's privity or knowledge,¹¹ or where the nature of the claim rendered the limitation of liability defense inapposite.¹² Thus, claims for negligent entrustment and negligent supervision asserted against the owner of a boat which, while driven by a minor, strikes and fatally injures a person in the water, by nature precludes limitation of liability.¹³

On the other hand, an owner is not chargeable, for purposes of limiting liability, with latent defects¹⁴ or for the default of duly qualified employees¹⁵ or persons who were allowed to manage or operate the motorboat.¹⁶ However, a boat owner who has knowledge of a latent defect in a boat that caused it to take on water is not entitled to have liability limited.¹⁷

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Footnotes

- 1 46 U.S.C.A. § 30505.
- 2 *In re Illinois Marine Towing, Inc.*, 498 F.3d 645 (7th Cir. 2007); *Definitive Marine Surveys Inc. v. Tran*, 339 F. Supp. 3d 1292 (M.D. Fla. 2018).
As to privity or knowledge as effecting a shipowners' liability where the case involves large vessels, see *Am. Jur. 2d, Shipping* §§ 384 to 387.
- 3 *In re City of New York*, 522 F.3d 279 (2d Cir. 2008).
- 4 *Petition of Robertson*, 163 F. Supp. 242 (D. Mass. 1958).
The presence of the owner of a pleasure boat at the time of the accident in which the owner and passenger died did not alone preclude the co-owners of boat and estate of owner from asserting a claim under the limitation of Liability Act. *Polly v. Estate of Carlson*, 859 F. Supp. 270 (E.D. Mich. 1994).
- 5 *Coryell v. Phipps*, 317 U.S. 406, 63 S. Ct. 291, 87 L. Ed. 363 (1943); *Petition of Bogan*, 103 F. Supp. 755 (D.N.J. 1952).
As to privity and knowledge as affecting the liability of vessels and owners of large vessels, generally, see *Am. Jur. 2d, Shipping* §§ 384 to 387.
- 6 *Coryell v. Phipps*, 317 U.S. 406, 63 S. Ct. 291, 87 L. Ed. 363 (1943).
- 7 *Complaint of Marine Sports, Inc.*, 840 F. Supp. 46 (D. Md. 1993).
- 8 *Coryell v. Phipps*, 317 U.S. 406, 63 S. Ct. 291, 87 L. Ed. 363 (1943); *Petition of Landi*, 194 F. Supp. 353 (S.D. N.Y. 1960).
- 9 *Keys Jet Ski, Inc. v. Kays*, 893 F.2d 1225 (11th Cir. 1990).
- 10 *Coryell v. Phipps*, 317 U.S. 406, 63 S. Ct. 291, 87 L. Ed. 363 (1943).
- 11 *The Linseed King*, 285 U.S. 502, 52 S. Ct. 450, 76 L. Ed. 903 (1932); *Petition of Robertson*, 163 F. Supp. 242 (D. Mass. 1958); *Petition of Follett*, 172 F. Supp. 304 (S.D. Tex. 1958).
- 12 *In re Ruiz*, 494 F. Supp. 2d 1339 (S.D. Fla. 2007).
- 13 *In re Ruiz*, 494 F. Supp. 2d 1339 (S.D. Fla. 2007).
- 14 *Coryell v. Phipps*, 317 U.S. 406, 63 S. Ct. 291, 87 L. Ed. 363 (1943); *Petition of Reading*, 169 F. Supp. 165 (N.D. N.Y. 1958), decree aff'd by, 271 F.2d 959 (2d Cir. 1959).
- 15 *California Yacht Club of Los Angeles v. Johnson*, 65 F.2d 245 (C.C.A. 9th Cir. 1933); *The Trillora II*, 76 F. Supp. 50 (E.D. S.C. 1947).
- 16 *Rautbord v. Ehmann*, 190 F.2d 533 (7th Cir. 1951); *Petition of Hocking*, 158 F. Supp. 620 (D.N.J. 1958).

17

[Anderson v. Whittaker Corp.](#), 894 F.2d 804, 29 Fed. R. Evid. Serv. 1033 (6th Cir. 1990).

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Research References

West's Key Number Digest

West's Key Number Digest, [Shipping](#) , 79, 81(1), 166(1), 166(3)

A.L.R. Library

A.L.R. Index, Jet Skis

A.L.R. Index, Pleasure Boats

A.L.R. Index, Yachts

West's A.L.R. Digest, [Shipping](#) , 79, 81(1), 166(1), 166(3)

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12 Am. Jur. 2d Boats and Boating § 54

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

D. Defenses or Grounds for Division or Apportionment of Damages

§ 54. Comparative negligence or mutual fault in negligence actions against motorboat owners or operators

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West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79, 81(1), 166(3)

The rule of comparative fault and proportionate recovery of damages generally applies in admiralty and maritime negligence actions when the concurrent negligence of two or more parties results in the damage that is the subject of the suit. Liability is to be allocated among the parties proportionately to the comparative degree of their fault and is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault.¹ However, contributory negligence may still be a complete bar to recovery in an action based on a state wrongful death statute.² Comparative negligence is the rule in federal admiralty law, and applies in a case in which two personal watercraft collide and a passenger is injured.³

The proximate causation requirement, and the related superseding cause doctrine, are applicable in admiralty, notwithstanding the United States Supreme Court's adoption of a comparative fault principle, as there is nothing internally inconsistent in a system that apportions damages based upon comparative fault only among tortfeasors whose actions were the proximate causes of an injury.⁴

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Footnotes

- ¹ [Am. Jur. 2d, Shipping § 352.](#)
- ² [§ 58.](#)
- ³ [DiNunno v. Lucky Fin Water Sports, LLC, 837 F. Supp. 2d 419 \(D.N.J. 2011\) \(applying New Jersey law\).](#)
- ⁴ [Exxon Co., U.S.A. v. Sofec, Inc., 517 U.S. 830, 116 S. Ct. 1813, 135 L. Ed. 2d 113 \(1996\).](#)

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

D. Defenses or Grounds for Division or Apportionment of Damages

§ 55. Comparative negligence or mutual fault in negligence actions against motorboat owners or operators—Negligence of guests, invitees, passengers, or members of crew

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79, 81(1), 166(3)

A.L.R. Library

[Liability of owner or operator of pleasure boat for injury or death of guest passenger, 35 A.L.R.4th 104](#)

Forms

Forms relating to guests, generally, see Am. Jur. Pleading and Practice Forms, Boats and Boating [\[Westlaw® Search Query\]](#)

A boat passenger's consumption of drugs or alcohol may constitute contributory negligence and diminish the amount of recovery.¹ The decision to ride in a boat operated by a person who is known to have consumed alcohol or used drugs may also be contributory negligence.²

In a suit for personal injuries by an invitee of a motorboat owner, findings of no contributory negligence may be sustained on evidence that the invitee was not aware of the danger involved in the situation that caused the injuries.³ But in other cases, an

injured guest or passenger has been found contributorily negligent, as where the injured person placed themselves in a precarious position on a high-speed motorboat⁴ or a motorboat towing a water skier.⁵

The fact that a boat owner is also a passenger on his or her own boat does not confer a duty on the passenger to keep a lookout unless, as with an ordinary passenger, the person running the boat is known to the passenger to be inattentive or careless in their operation, or the passenger has been jointly operating the boat.⁶

A passenger's failure to use life saving devices may amount to contributory negligence.⁷

Practice Tip:

A court does not clearly err in assigning 90% of liability in a maritime negligence action to a vessel owner, whose captain failed to decelerate after cresting an eight-foot wave, causing the passenger to fall to the floor and be injured, where, at the bench trial the parties did not present evidence about whether the passenger's injury would have occurred had the passenger independently moved from the wheelhouse to the passenger area when the vessel encountered rough seas.⁸

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Footnotes

- 1 [Schumacher v. Cooper](#), 850 F. Supp. 438 (D.S.C. 1994).
- 2 [Skidmore v. Grueninger](#), 506 F.2d 716 (5th Cir. 1975).
- 3 [Calanchini v. Bliss](#), 88 F.2d 82 (C.C.A. 9th Cir. 1937).
- 4 [Scheiner v. St. Jovite](#), 180 F. Supp. 452 (N.D. Cal. 1960) (straddling bow).
Evidence created jury questions whether a boat passenger sat on the motor box of the moving boat and was comparatively negligent. [Klyn v. Aruta](#), 34 Ohio App. 3d 152, 517 N.E.2d 992 (11th Dist. Lake County 1986).
- 5 [Isaacson v. Jones](#), 216 F.2d 599 (9th Cir. 1954) (sitting on gunwale).
- 6 [Holzhauer v. Golden Gate Bridge Highway & Transportation District](#), 899 F.3d 844 (9th Cir. 2018).
- 7 [Skidmore v. Grueninger](#), 506 F.2d 716 (5th Cir. 1975); [Hall v. Robinson](#), 495 F. Supp. 123 (E.D. Tenn. 1980).
- 8 [Deperrodil v. Bozovic Marine, Incorporated](#), 842 F.3d 352 (5th Cir. 2016).

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

D. Defenses or Grounds for Division or Apportionment of Damages

§ 56. Comparative negligence or mutual fault in negligence actions against motorboat owners or operators—Negligence of swimmers and water skiers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79, 81(1), 166(3)

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[Liability for injuries to, or death of, water-skiers, 34 A.L.R.5th 77](#)

[Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127](#)

Forms

Forms relating to swimmers and water skiers, generally, see Am. Jur. Pleading and Practice Forms, Boats and Boating
[\[Westlaw® Search Query\]](#)

To establish a contributory negligence defense, the defendant must demonstrate that the plaintiff failed to exercise reasonable care and that the plaintiff's negligence was the proximate cause of the injury.¹ Allegations that boat passengers were contributorily negligent may be grounded in their failure to take precaution to avoid injury, as where the passengers had been dancing on the bow despite warning labels to the contrary.²

A swimmer's violation of an ordinance prohibiting swimming in the part of a river where the swimmer is struck and killed by a motorboat is only prima facie evidence of negligence, and hence it is error to charge the jury that the violation constitutes negligence.³ Furthermore, a finding of no contributory negligence on the part of a swimmer may be sustained where, as guest on a motorboat, the swimmer had gone over the side for a swim and, after signaling the owner to pick him or her up, was struck by the boat.⁴

Where a water skier, who falls as the towing motorboat turned, is struck by another motorboat that was running on a parallel course, it is a question for the jury whether the skier was contributorily negligent.⁵ A water skier's failure to disentangle a tow line at time the skier began to lose balance, arising from the skier's desire not to receive an unsuccessful mark in a competition, constitutes a failure to exercise ordinary care for the skier's own safety as a matter of law.⁶

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Footnotes

- 1 [Ginop v. A 1984 Bayliner 27' Cabin Cruiser, 242 F. Supp. 2d 482 \(E.D. Mich. 2003\).](#)
- 2 [In re Fun Time Boat Rental & Storage, LLC, 431 F. Supp. 2d 993 \(D. Ariz. 2006\).](#)
- 3 [Dodican v. Smith, 221 A.D. 383, 222 N.Y.S. 748 \(4th Dep't 1927\).](#)
- 4 [Schoremoyer v. Barnes, 190 F.2d 14 \(5th Cir. 1951\).](#)
- 5 [Nugen v. Hildebrand, 145 W. Va. 420, 114 S.E.2d 896 \(1960\) \(sustaining recovery\).](#)
- 6 [Polsky v. Levine, 73 Wis. 2d 547, 243 N.W.2d 503 \(1976\).](#)

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

D. Defenses or Grounds for Division or Apportionment of Damages

§ 57. Comparative negligence or mutual fault in negligence actions against motorboat owners or operators—Negligence of other vessels

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#) 79, 81(1), 166(3)

Trial Strategy

[Motorboat Accident Litigation, 7 Am. Jur. Trials 1](#)

In a number of cases involving a collision between a motorboat and another type of vessel each vessel has been found to be mutually at fault, such as where the other vessel failed to maintain a proper lookout prior to colliding with an improperly anchored¹ or improperly lighted² motorboat, or with a motorboat which was also not keeping a proper lookout,³ or where the other vessel, in overtaking the motorboat which was not keeping a proper lookout, violated its duty to give way,⁴ or where the other vessel failed to sound an appropriate signal while approaching a blind bend, even though the motorboat was speeding and on the wrong side of the bayou.⁵ Where a waverunner passenger is injured in a collision with another waverunner, liability will be apportioned between the two waverunner drivers in that the driver who strikes the passenger's waverunner fails to obey the rental company's instructions regarding distance and positioning of the waverunner and the driver of the passenger's waverunner fails to obey the rental company's instructions regarding looking behind him before making the left turn.⁶ However, there may be insufficient evidence of contributory negligence or mutual fault on the part of the other vessel, where the alleged fault in not keeping a proper lookout had no causal effect on the ensuing collision.⁷

In a collision between a motor boat and a barge, the apportionment of fault between the parties may be vacated if the district court erred in holding that the tug had improper running lights, and where the owner of the tug was entitled to have the jury

instructed that the tug could take special circumstances into consideration in obeying the Inland Water Rules.⁸ As general rule, a passenger has no duty to keep a lookout on behalf of the speedboat's operator. The passenger need only keep a lookout (1) when the passenger knows from past experience or from the manner in which the vessel is being operated on a particular trip, that the driver is likely to be inattentive or careless; and (2) when the passenger jointly operates vessel, meaning the passenger has active responsibility for and control over certain aspects of boat's navigation.⁹

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Footnotes

- 1 [The O'Brien Brothers, 258 F. 614 \(C.C.A. 2d Cir. 1919\).](#)
- 2 [Davis v. The Esso Delivery No. 13, 100 F. Supp. 285 \(D. Md. 1951\).](#)
- 3 [Fitzgerald v. Merryman, 865 F. Supp. 9 \(D. Me. 1994\).](#)
- 4 [Stevens v. U.S. Lines Co., 187 F.2d 670 \(1st Cir. 1951\).](#)
- 5 [Walker v. Braus, 861 F. Supp. 527 \(E.D. La. 1994\).](#)
- 6 [DiNenno v. Lucky Fin Water Sports, LLC, 837 F. Supp. 2d 419 \(D.N.J. 2011\)](#) (applying New Jersey law and holding that the driver of the waverunner that strikes the passenger is 80% liable, and the driver of passenger's waverunner is 20% liable).
- 7 [Connolly v. the Ace, 164 F.2d 86 \(C.C.A. 2d Cir. 1947\).](#)
- 8 [Stissi v. Interstate and Ocean Transport Co. of Philadelphia, 765 F.2d 370 \(2d Cir. 1985\).](#)
- 9 [Holzhauer v. Golden Gate Bridge Highway & Transportation District, 899 F.3d 844 \(9th Cir. 2018\).](#)

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

D. Defenses or Grounds for Division or Apportionment of Damages

§ 58. Applicability of comparative negligence in actions against motorboat owners or operators under state wrongful death statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79, 81(1), 166(3)

A.L.R. Library

[Comment Note.—Action for death caused by maritime tort within a state's territorial waters, 71 A.L.R.2d 1296](#)

In an action in admiralty under the wrongful death statute of a state, the substantive law of the state is applicable with regard to available defenses.¹ This rule applies, for example, to deny recovery in an action brought in a federal district court under a state wrongful death statute for the death of an outboard motorboat operator resulting from a collision with a steamer, where the motorboat operator is not keeping a proper lookout and tries to start the stalled motor in face of the onrushing steamer, when a few strokes of an oar would have put the motorboat out of danger.² Ordinarily, however, the comparative negligence doctrine is applied in admiralty.³

Caution:

There are conflicting views as to the applicability of the comparative negligence doctrine to preclude recovery for wrongful death in admiralty. Under one view, where the law of the state is that contributory negligence absolutely precludes recovery, that rule prevails. Under the view that maritime law will govern substantive matters in a general maritime action, the traditional maritime

comparative negligence rule governs the disposition of such a case, and the state contributory negligence rule could not be applied to bar recovery.⁴ There is no uniform maritime rule governing the effect of a prior settlement on the right to contribution by a joint tortfeasor; therefore, state law may supplement federal law, and thus, a state statute foreclosing the right of contribution may be properly applied by the trial court in a federal maritime-law action notwithstanding the general remedy of contribution in maritime law for apportioning liability according to fault.⁵

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Footnotes

- 1 [Am. Jur. 2d, Admiralty § 108.](#)
- 2 [Klingseisen v. Costanzo Transp. Co., 101 F.2d 902 \(C.C.A. 3d Cir. 1939\) \(applying Pennsylvania law\).](#)
Action seeking damages for injuries sustained by the plaintiff in a water-skiing incident was not cognizable in admiralty under the prevailing tests for admiralty torts jurisdiction, and thus the trial court was not bound to instruct the jury on maritime law and did not err in submitting the instruction on the state law of contributory negligence. [Pfeiffer v. Weiland, 226 N.W.2d 218 \(Iowa 1975\).](#)
- 3 [Am. Jur. 2d, Admiralty § 108.](#)
- 4 [Am. Jur. 2d, Admiralty § 108.](#)
- 5 [Am. Jur. 2d, Admiralty § 108.](#)

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12 Am. Jur. 2d Boats and Boating § 59

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

D. Defenses or Grounds for Division or Apportionment of Damages

§ 59. Last clear chance doctrine as applicable in comparative negligence cases involving motorboats

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79, 81(1), 166(3)

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[Last clear chance doctrine in admiralty](#), 3 A.L.R. Fed. 203

The doctrine of last clear chance still exists in maritime tort law, as an aspect of the requirement of proximate causation.¹

The doctrine has been applied, for example, in an action for the death of a motorboat operator resulting from a collision with the defendant's motorboat, where the collision occurred on a dark night and the defendant had no knowledge of the decedent's perilous situation until the operator was too close to the decedent's boat to avoid the accident.² There was no error in submitting to the jury the issue of liability under the doctrine for the drowning of an occupant of a rowboat after it was swamped by the defendant's speedboats, where there was evidence that after one of the speedboats caused water to go into the rowboat, another one filled it completely with water thereby causing it to sink.³

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Footnotes

¹ [Matter of Crounse Corp.](#), 956 F. Supp. 1392 (W.D. Tenn. 1996).

- 2 [Dickey v. Thornburgh](#), 82 Cal. App. 2d 723, 187 P.2d 132 (4th Dist. 1947).
- 3 [Vignone v. Pierce & Norton Co.](#), 130 Conn. 309, 33 A.2d 427 (1943).

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

D. Defenses or Grounds for Division or Apportionment of Damages

§ 60. Assumption of the risk in negligence actions against motorboat owners or operators

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79, 81(1), 166(1)

The general principle of negligence law, that one who voluntarily assumed the risk of injury from a known danger is barred from recovery, has been recognized in personal injury suits against motorboat owners.¹ More specifically, where individuals engage in recreational or sports activities, such as fishing activities, they assume the ordinary risks of the activity and cannot recover for any injury unless it can be shown that the other participant's actions were either reckless or intentional.² Moreover, an experienced water sports instructor, injured when struck by a wakeboarder after falling from a tube while simultaneously filming the wakeboarder being pulled by the same boat, assumes the risks of the water sports activity in which the instructor was engaged, thereby relieving the boat owner of liability for the instructor's injuries.³

Under the "recreational use doctrine," otherwise referred to as the "primary assumption of the risk doctrine," the plaintiff assumes the risk of the activity, such as "hooking" a boat to a bridge for fishing purposes, and is thus barred from recovery on the basis of negligence as a matter of law.⁴ A genuine issue of material fact as to whether an employee operated a motorboat negligently may preclude summary judgment in favor of a resort under the doctrine of primary assumption of the risk, where the plaintiff guest was thrown from the towed boat.⁵ While an affirmative defense in a negligence case asserts that even if the plaintiff has made a prima facie case of negligence, there can be no recovery, a primary assumption of risk defense is different because a defendant who asserts this defense asserts that no duty whatsoever is owed to the plaintiff.⁶ The doctrine of primary assumption of the risk applies to the sport of personal watercraft ("jet ski") riding.⁷ Statutes that require a personal watercraft to be operated in a reasonable and prudent manner and which prohibit maneuvers that unreasonably or unnecessarily endanger life, limb and property do not preempt the doctrine of primary assumption of the risk.⁸

Assumption of the risk applies to a speedboat owner who enters a race with the defendant's boat and others, and sustains damage to his or her boat in an ensuing collision,⁹ and to a passenger who was drowned in the swamping of an outboard motorboat with which she was familiar and which she knew was overloaded and lacked adequate lifesaving devices.¹⁰

On the other hand, the doctrine does not apply to an invitee who is un-versed in nautical matters and unaware of the danger, who drowns when an overloaded motorboat capsizes in the open sea,¹¹ or to a guest or passenger who is thrown overboard as a motorboat turns without warning while the passenger is sitting in a precarious position, such as on the gunwale of a motorboat towing a water skier,¹² While a passenger who rides in a precarious position on a high-speed motorboat may assume the risks naturally associated with riding in that position,¹³ and a guest who rides in a boat towing a water skier assumes the risks naturally incident to the reasonable and prudent operation of the boat,¹⁴ the passenger does not assume the added risk of negligent operation.¹⁵ Similarly, while a water skier may assume the normal risk incident to skiing behind the towing motorboat, the passenger does not assume the risk of an independent act of negligence by the operator of another motorboat.¹⁶ Also, recovery is not barred on the ground of assumption of the risk if the plaintiff's decedent agreed with a motorboat owner and another to tune up the boat and is drowned after falling overboard during a test run.¹⁷

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Footnotes

- 1 [Rothman v. U-Steer-It, Inc.](#), 247 F.2d 803 (5th Cir. 1957); [Chung v. Lehmann](#), 144 A.D.3d 563, 42 N.Y.S.3d 12 (1st Dep't 2016), leave to appeal denied, 29 N.Y.3d 902, 57 N.Y.S.3d 705, 80 N.E.3d 398 (2017).
However, primary assumption of the risk did not apply to bar liability of yacht club, boat pilot, and owner of boat and dock for negligence for passenger's broken leg sustained in attempting to jump or step from the boat to the dock, after riding out to sea to cast his father's ashes into the ocean, since he was merely the passenger on a boat, rather than a participant in an activity such as an active sport; when passenger was injured, his son had already disembarked to assist in tying off the boat, and the portable steps that passenger had used to board the boat were not in place. [Kindrich v. Long Beach Yacht Club](#), 167 Cal. App. 4th 1252, 84 Cal. Rptr. 3d 824 (4th Dist. 2008).
Genuine issue of material fact, as to whether parasailer's risk of injury was increased by having another patron who was not an employee of, or trained by, corporate entity that owned boat and operated parasailing ride act as "spotter" for boat operator while patron was parasailing, precluded summary judgment for corporation on personal injury claim based on defense of assumption of the risk. [Ransier v. Quirk Marine, Inc.](#), 11 Misc. 3d 48, 812 N.Y.S.2d 214 (App. Term 2006).
- 2 [Konet v. Roberts](#), 2016-Ohio-1306, 62 N.E.3d 698 (Ohio Ct. App. 11th Dist. Portage County 2016), citing to Restatement Third, Torts: Liability for Physical and Emotional Harm § 10.
- 3 [Chung v. Lehmann](#), 144 A.D.3d 563, 42 N.Y.S.3d 12 (1st Dep't 2016), leave to appeal denied, 29 N.Y.3d 902, 57 N.Y.S.3d 705, 80 N.E.3d 398 (2017).
- 4 [Konet v. Roberts](#), 2016-Ohio-1306, 62 N.E.3d 698 (Ohio Ct. App. 11th Dist. Portage County 2016) (a primary assumption of the risk defense asserts that no duty whatsoever is owed to the plaintiff).
- 5 [Connor v. Tee Bar Corp.](#), 302 A.D.2d 729, 755 N.Y.S.2d 489 (3d Dep't 2003) (claim that boat was negligently loaded and towed too fast).
- 6 [Konet v. Roberts](#), 2016-Ohio-1306, 62 N.E.3d 698 (Ohio Ct. App. 11th Dist. Portage County 2016).
- 7 [Whelihan v. Espinoza](#), 110 Cal. App. 4th 1566, 2 Cal. Rptr. 3d 883 (3d Dist. 2003).
- 8 [Whelihan v. Espinoza](#), 110 Cal. App. 4th 1566, 2 Cal. Rptr. 3d 883 (3d Dist. 2003).
- 9 [Dunion v. Kaiser](#), 124 F. Supp. 41 (E.D. Pa. 1954).
- 10 [Tipton v. Day](#), 79 Ohio L. Abs. 12, 154 N.E.2d 174 (Ct. App. 10th Dist. Franklin County 1958).
But see [Johnson v. State Farm Fire & Cas. Co.](#), 303 So. 2d 779 (La. Ct. App. 3d Cir. 1974) (decedent who fell overboard and drowned when the boat operator accidentally hit the accelerator was not contributorily

negligent nor did he assume the risk of the accident by his failure to wear a life jacket since, whether or not he could swim, his heavy clothing might have prevented him from doing so).

11 [Calanchini v. Bliss](#), 88 F.2d 82 (C.C.A. 9th Cir. 1937).

12 [Isaacson v. Jones](#), 216 F.2d 599 (9th Cir. 1954).

13 [Scheiner v. St. Jovite](#), 180 F. Supp. 452 (N.D. Cal. 1960); [Cashell v. Hart](#), 143 So. 2d 559 (Fla. 2d DCA 1962).

14 [Isaacson v. Jones](#), 216 F.2d 599 (9th Cir. 1954).

15 [Scheiner v. St. Jovite](#), 180 F. Supp. 452 (N.D. Cal. 1960) (but further holding that he was contributorily negligent so as to call for application of admiralty doctrine of comparative negligence).

16 [Nugen v. Hildebrand](#), 145 W. Va. 420, 114 S.E.2d 896 (1960).

Although a motorboat passenger assumed ordinary and normal hazards incidental to activity in which she was participating, she did not assume the risk of negligence on part of boat operator; passenger was not shown to have assumed the risk by riding with the boat operator whom passenger knew to be intoxicated or “high” on marijuana where record was devoid of any evidence which would show that operator was intoxicated or high to degree that contributed to his negligent operation of boat or that plaintiff knew of operator's condition. [Holman v. Reliance Ins. Companies](#), 414 So. 2d 1298, 35 A.L.R.4th 81 (La. Ct. App. 2d Cir. 1982), writ denied, 420 So. 2d 164 (La. 1982).

17 [Gilreath v. Silverman](#), 245 N.C. 51, 95 S.E.2d 107 (1956).

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12 Am. Jur. 2d Boats and Boating § 61

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V. Liability of Motorboat Owners and Operators for Injuries or Damage

E. Remedies and Procedure

§ 61. Procedure in tort cases involving boating accident, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  18

West's Key Number Digest, [Shipping](#)  86(1)

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[Comment Note.—Action for death caused by maritime tort within a state's territorial waters, 71 A.L.R.2d 1296](#)

[Admiralty jurisdiction: maritime nature of tort—modern cases, 80 A.L.R. Fed. 105](#)

The determination whether an accident involving pleasure craft is a maritime tort depends on whether the misconduct was sufficiently related to traditional maritime activity.¹ Protecting commercial shipping is at the heart of admiralty jurisdiction, and not every accident that might disrupt maritime commerce will support its invocation.² A tort is maritime in nature and within admiralty tort jurisdiction only if it satisfies two tests; first, the tort must have occurred on navigable waters or, if the injury is suffered on land, must have been caused by a vessel on navigable waters, and second, the tort must bear a significant connection to a traditional maritime activity.³ Moreover, it is not necessary to show that an accident involving a pleasure craft actually disrupted maritime commerce, so long as it had a potentially disruptive impact and the general conduct giving rise to the incident was substantially related to traditional maritime activity.⁴ A federal maritime wrongful death action does not preempt the application of state wrongful death and survival statutes to accidents to nonseamen in territorial waters.⁵

A personal injury action arising out of the collision of two pleasure craft falls within admiralty jurisdiction.⁶ However, the test is apparently not met if the negligent acts could not have been construed as impeding maritime commerce,⁷ even though they

occurred on a technically navigable water.⁸ Nevertheless, the rescue of a recreational boat passenger who dived from a boat on open navigable waters and was injured, necessitating a rescue by boat, poses a potentially disruptive effect on maritime commerce, and thus is within the admiralty jurisdiction of the court.⁹ Furthermore, injuries resulting from diving from a pleasure boat are not maritime in nature, based on such reasons as that the boat operated as a floating diving platform,¹⁰ navigation error was not involved, and that the activity bore no substantial relationship to traditional maritime activity.¹¹

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Footnotes

- 1 [Foremost Ins. Co. v. Richardson](#), 457 U.S. 668, 102 S. Ct. 2654, 73 L. Ed. 2d 300 (1982).
- 2 [Sisson v. Ruby](#), 497 U.S. 358, 110 S. Ct. 2892, 111 L. Ed. 2d 292 (1990); [Foremost Ins. Co. v. Richardson](#), 457 U.S. 668, 102 S. Ct. 2654, 73 L. Ed. 2d 300 (1982).
As to jurisdiction over the federal limitation on liability of motorboat owners, see § 51.
- 3 [Welch v. Daniels](#), 207 So. 3d 1151 (La. Ct. App. 1st Cir. 2016) (holding that boat passenger failed to establish that his injury occurred on navigable waters where passenger was injured while attempting to disembark from boat, and at the time the injury occurred the boat was not in navigable waters, as it was on a trailer, and only the back wheels of the trailer were in the water).
- 4 [Sisson v. Ruby](#), 497 U.S. 358, 110 S. Ct. 2892, 111 L. Ed. 2d 292 (1990); [In re Petition of Germain](#), 824 F.3d 258 (2d Cir. 2016) (rescue of recreational boat passenger who dived from boat on open navigable waters and injured himself had potentially disruptive effect on maritime commerce).
In addition to location, the prevailing test for admiralty tort jurisdiction focuses on whether the incident giving rise to the tort, defined at an intermediate level of possible generality, has a potentially disruptive effect on maritime commerce, and whether the general character of the activity giving rise to the incident bears a substantial relationship to traditional maritime activity. [In re Petition of Germain](#), 824 F.3d 258 (2d Cir. 2016).
- 5 [Yamaha Motor Corp., U.S.A. v. Calhoun](#), 516 U.S. 199, 116 S. Ct. 619, 133 L. Ed. 2d 578 (1996).
- 6 [Foremost Ins. Co. v. Richardson](#), 457 U.S. 668, 102 S. Ct. 2654, 73 L. Ed. 2d 300 (1982).
Admiralty jurisdiction is not limited to commercial shipping, and includes pleasure crafts so long as navigation and a potential threat to commercial shipping exists, providing the necessary nexus to establish admiralty jurisdiction over the subject matter of the action. [Matter of Guglielmo](#), 897 F.2d 58 (2d Cir. 1990).
- 7 [Smith v. Knowles](#), 642 F. Supp. 1137 (D. Md. 1986).
- 8 [Chapman v. U.S.](#), 575 F.2d 147 (7th Cir. 1978).
- 9 [In re Petition of Germain](#), 824 F.3d 258 (2d Cir. 2016).
- 10 [Foster v. Peddicord](#), 826 F.2d 1370 (4th Cir. 1987).
- 11 [Delta Country Ventures, Inc. v. Magana](#), 986 F.2d 1260 (9th Cir. 1993).

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VI. Liability for Injury to, or by, Nonpower Boats

[Topic Summary](#) | [Correlation Table](#)

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VI. Liability for Injury to, or by, Nonpower Boats

§ 62. Liability for injury to or by sailboats

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Shipping](#)  79 to 82, 166(1)

In regard to the rights, duties and liabilities arising out of collisions or other accidents involving smaller sailboats operated for pleasure, many situations have been presented, as where recovery for damage to a sailboat has been allowed under such circumstances as a Coast Guard cutter passing a becalmed sloop at such proximity and speed as to cause an excessive swell which in turn caught the sloop broadside and the impact from which snapped her mast with ensuing damage to her sail and deck railing.¹ A boater whose sailboat mast hits power transmission cables suspended above a bay may be presumed negligent and at fault for having collided with a fixed object noted on the applicable National Oceanic and Atmospheric Association (NOAA) charts,² and such a vessel may overcome the presumption if its operator could prove that he or she acted with reasonable precautions under the circumstances, with the standard of reasonableness that of prudent persons familiar with the ways and vagaries of the sea.³ Where a hurricane causes a sailboat to come loose from its moorings, the owner is not liable under general maritime law for damage it causes to real property,⁴ or another vessel⁵ if the owner takes reasonable precautions in securing the sailboat or yacht in preparation for the impending storm and there is no showing that the owner is otherwise negligent,⁶ because the hurricane is an act of God.⁷

In an action for the death of a boy who was electrocuted when the mast of his sailboat came into contact with the defendant power company's high-voltage wire which had sagged below the lawful minimum height, it was a jury question whether the decedent was contributorily negligent in going too close to the wire to determine if the mast would clear it or in attempting to avoid the wire by turning the boat sideways so as to subject it to wind which blew it against the wire, rather than by paddling the boat backward away from the wire.⁸ In an action against both a sailboat operator and a motorboat operator for damage resulting to a boat and a pier to which it was moored when struck by the motorboat, the evidence supported findings that the sailboat operator had not negligently failed to yield the right of way to the motorboat so as to cause it to turn into the plaintiff's boat to avoid striking the sailboat but that the motorboat operator was negligent in not keeping a proper lookout.⁹

CUMULATIVE SUPPLEMENT

Cases:

District Court's findings of fact in maritime action for unseaworthiness were sufficient to indicate the basis for its ultimate conclusion that harbor pilot who was injured when he tripped aboard vessel was not contributorily negligent; beyond its legal conclusions, the District Court also made several factual findings that indicated the basis for its determination, including determining that the edges of the hatch cover were not marked, that the hatch was unusually placed, and that the hatch cover was oddly positioned and difficult to see. [Fed. R. Civ. P. 52. Rivera v. Kirby Offshore Marine, L.L.C., 983 F.3d 811 \(5th Cir. 2020\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S. v. Ladd, 193 F.2d 929 \(4th Cir. 1952\).](#)
Generally as to relative rights of small craft and large vessels, and duty of latter toward former with respect to displacement waves and swells, see §§ 2, 3.
- 2 [Alprin v. City of Tacoma, 139 Wash. App. 166, 159 P.3d 448 \(Div. 2 2007\).](#)
- 3 [Alprin v. City of Tacoma, 139 Wash. App. 166, 159 P.3d 448 \(Div. 2 2007\).](#)
- 4 [Simmons v. Berglin, 401 Fed. Appx. 903 \(5th Cir. 2010\).](#)
- 5 [Hatt 65, LLC v. Kreitzberg, 658 F.3d 1243 \(11th Cir. 2011\).](#)
- 6 [Hatt 65, LLC v. Kreitzberg, 658 F.3d 1243 \(11th Cir. 2011\).](#)
- 7 [Simmons v. Berglin, 401 Fed. Appx. 903 \(5th Cir. 2010\).](#)
- 8 [Ottetail Power Co. v. Duncan, 137 F.2d 157 \(C.C.A. 8th Cir. 1943\).](#)
Action brought against owner of power line and manufacturer of sailboat is within federal district court's admiralty jurisdiction, where action arises out of electrocution of plaintiffs' decedents when mast of sailboat which they were attempting to beach came in contact with energized, uninsulated power line, and where boat was below mean high-water mark when accident occurred. [Hassinger v. Tideland Elec. Membership Corp., 781 F.2d 1022 \(4th Cir. 1986\).](#)
- 9 [Nemec v. Polley, 129 Cal. App. 2d 453, 277 P.2d 76 \(4th Dist. 1954\).](#)

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VII. Liability of Boat Livery or Resort Operators for Boating Injuries

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VII. Liability of Boat Livery or Resort Operators for Boating Injuries

§ 63. Liability of boat liveries for watercraft injuries

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[Liability of owner or operator of boat livery for injury to patron, 94 A.L.R.3d 876](#)

[Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018](#)

One who owns or operates a boat livery owes a duty to exercise reasonable care to furnish boats that are reasonably safe for normal use, except as to defects that the owner or operator might reasonably expect a person using a boat to discover and correct in the exercise of reasonable care.¹ The law imposes no requirement that one who rents equipment such as a boat instruct on every possible danger that could be faced.² Indeed, the United States, in renting out a pontoon boat to the operator at an Army's recreational facility, is not required to anticipate, and warn against, every potential danger or mistake the operator might make leading up to the fall of a passenger, from the bow of the pontoon boat; it is the responsibility of the operator, not the United States, to enforce the rules set forth in the operator's briefing checklist once the boat is underway.³

A waverunner rental company does not breach its duty of care by providing inadequate and incomplete safety instructions to its renters, even assuming that the company breaches its duty to properly instruct renters how to "overtake" other watercraft, where the injured plaintiff does not prove that the asserted breach was the proximate cause of the collision, in that the collision is caused by the failure of one renter to heed the rental company's instructions regarding maintaining a safe distance and positioning, and the failure of the other renter to heed instructions regarding keeping a proper lookout.⁴

Where the absence of an operational radio or ladder on a rented pontoon boat is not a cause of the injuries sustained by a passenger who fell from the bow of the boat during a rental, maritime negligence of the Army recreational facility that rents out watercraft is not established.⁵

A boat livery operator as a bailor for hire owes to the bailee the duty to deliver the bailed chattel in a proper condition to be used as contemplated by the parties and that the operator is required to use a high degree of care to know the condition of the chattel where he or she knows the general purpose for which it is to be used, although he or she is not an insurer of the safety of the bailee from injuries from its use.⁶

A boat livery operator, at least in the absence of public regulation or contract, is not bound to furnish boats that will float and sustain their passengers when capsized,⁷ nor does a city operating a boat livery on a city-owned lake have a legal duty to maintain a patrol to rescue persons from rented boats that might capsize.⁸ A city that rents rowboats to the public for a fee for use on a city-owned lake may be liable for injuries to, or the death of, persons renting a boat resulting from its unsafe condition, if the city does not operate the lake for recreational purposes so as to be engaged in a governmental, rather than proprietary, function exempting it from liability for civil damages.⁹

While maritime law recognizes the tort of negligent entrustment, such a tort requires that the boat owner knew or should have known that the person to whom the boat was entrusted was likely to use it in a dangerous manner.¹⁰

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Footnotes

- 1 [Vignone v. Pierce & Norton Co.](#), 130 Conn. 309, 33 A.2d 427 (1943).
As to liability of bailee for hire to boat livery operator for damage to boat, see §§ 67 to 69.
- 2 [Regan v. Starcraft Marine LLC](#), 719 F. Supp. 2d 690 (W.D. La. 2010), judgment aff'd, 418 Fed. Appx. 310 (5th Cir. 2011).
- 3 [Regan v. Starcraft Marine LLC](#), 719 F. Supp. 2d 690 (W.D. La. 2010), judgment aff'd, 418 Fed. Appx. 310 (5th Cir. 2011).
- 4 [DiNenno v. Lucky Fin Water Sports, LLC](#), 837 F. Supp. 2d 419 (D.N.J. 2011) (applying New Jersey law).
- 5 [Regan v. Starcraft Marine LLC](#), 719 F. Supp. 2d 690 (W.D. La. 2010), judgment aff'd, 418 Fed. Appx. 310 (5th Cir. 2011).
- 6 [Moore v. City of Ardmore](#), 1940 OK 426, 188 Okla. 74, 106 P.2d 515, 131 A.L.R. 841 (1940).
- 7 [Moore v. City of Ardmore](#), 1940 OK 426, 188 Okla. 74, 106 P.2d 515, 131 A.L.R. 841 (1940).
As to public regulation of equipment on motorboats and other small craft, generally, see §§ 11 to 16.
- 8 [Moore v. City of Ardmore](#), 1940 OK 426, 188 Okla. 74, 106 P.2d 515, 131 A.L.R. 841 (1940).
- 9 [Cates v. City of Bloomington](#), 333 Ill. App. 189, 77 N.E.2d 46 (3d Dist. 1947).
As to liability of municipality for boating injuries in parks and other public places, generally, see § 65.
As to liability of municipality for injuries due to conditions in public parks, generally, see [Am. Jur. 2d, Parks, Squares, and Playgrounds](#) §§ 30 to 43.
- 10 [Regan v. Starcraft Marine LLC](#), 719 F. Supp. 2d 690 (W.D. La. 2010), judgment aff'd, 418 Fed. Appx. 310 (5th Cir. 2011) (no liability where the operator who rented a pontoon possessed a safe boater card, showing that he had passed safety course, and approximately two weeks prior to the accident had rented a pontoon boat at facility and experienced no problems with his boat rental).

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12 Am. Jur. 2d Boats and Boating § 64

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VII. Liability of Boat Livery or Resort Operators for Boating Injuries

§ 64. Liability of resort operators for watercraft injuries

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[Liability for injuries to, or death of, water-skiers, 34 A.L.R.5th 77](#)

[Liability of private owner or operator of bathing resort or swimming pool for injury or death of patron, 48 A.L.R.2d 104](#)

The general rules with respect to the duties and liabilities of an owner or occupant of premises to invitees¹ have been applied or recognized in actions against private owners or operators of bathing or other resort areas for injuries to, or the death of, swimmers or water skiers resulting from being struck by motorboats. Thus, the rules that the owner or occupier of premises owes to invitees a duty of maintaining the property in reasonably safe condition, of exercising reasonable care to protect an invitee from injury, and of protecting an invitee by taking appropriate measures to restrain conduct by third persons which the owner or occupier should be aware of and should realize is dangerous, have been applied in imposing liability upon the lessee/operator of a boating, waterskiing, and picnicking area for injuries sustained by a novice water skier when, while waiting for a takeoff in shallow water within the leased premises, she was struck by a motorboat as it veered into shore after colliding with the motorboat that was returning for the waiting skier.² However, while it was recognized that the private owner and operator of a beach resort on a state-owned lake was subject to the rule imposing liability on the owner of property for injuries sustained by an invitee which are caused by dangerous conditions known, or which should have been known, by the property owner but which are unknown and not to be anticipated by the invitee, the beach owner and operator was not liable for the death of a swimmer resulting from being struck by a motorboat that was permitted to dock at the defendant's pier, where there was insufficient evidence that the decedent was an invitee or licensee of the defendant and had entered a place under the defendant's control or supervision or that the use of the area was hazardous and the decedent could not reasonably be expected to know and appreciate the hazard.³

The operator of a speed boat who provides thrill rides is not a “common carrier” under common-law principles, and thus, the operator is not held to a higher standard of care when transporting passengers, and instead is only held to the standard of ordinary care, where the operator's primary purpose was to entertain, not to transport from place to place.⁴

In an action for injuries sustained by a bather at defendant's public beach when she was struck by a motorboat launched from the beach, the defendant would not be liable for negligence in failing to prevent or warn against the foreseeable negligent acts of the motorboat operator, where there was no evidence of a history of negligent operation of motorboats in the area.⁵ Recovery has been recognized in an action against a village, which maintained a beach on a state-owned lake as part of a public park, for the death of a child swimmer who was struck by a motorboat which had just left a slip leased from the village, where the village was charged with negligence arising from a nuisance for permitting children to use the beach when speedboats were invited and allowed to operate freely in the area and with negligent failure to provide adequate police, lifeguards, and attendants or to erect warning signs.⁶

In a tort action brought by guests of a hotel for injuries sustained when a sailboat rented by the guests breaks, a directed verdict for the defendants may be improper if there was sufficient evidence of apparent agency to preclude a directed verdict for the hotel.⁷ A waverunner leased to a hotel guest is not “seaworthy” if the manufacturer-installed protective padding around the steering wheel area was removed,⁸ and thus a service at a hotel that leases the craft is not immune from liability under a livery statute.⁹

Caution:

A significant number of jurisdictions have judicially abrogated distinctions grounded in common-law status classifications and have applied the rule that an owner or occupier of land has a duty of reasonable care under the circumstances.¹⁰ Some other jurisdictions have abolished the distinctions between invitees and licensees in determining premises liability but have retained common-law rules on trespassers.¹¹

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Footnotes

- 1 As to the duties owed to invitees, see [Am. Jur. 2d, Premises Liability §§ 158 to 179](#).
- 2 [Sorensen v. Hutson](#), 175 Cal. App. 2d 817, 346 P.2d 785 (4th Dist. 1959).
- 3 [Williams v. McSwain](#), 248 N.C. 13, 102 S.E.2d 464 (1958).
- 4 [Speed Boat Leasing, Inc. v. Elmer](#), 124 S.W.3d 210 (Tex. 2003).
- 5 [Gratto v. Palangi](#), 154 Me. 308, 147 A.2d 455 (1958).
- 6 [Schneider v. Village of Lake George](#), 280 N.Y. 507, 19 N.E.2d 918 (1939).
- 7 As to liability of municipality for boating injuries in parks and other public places, generally, see § 65.
- 8 [Amoroso v. Samuel Friedland Family Enterprises](#), 604 So. 2d 827, 18 U.C.C. Rep. Serv. 2d 1096 (Fla. 4th DCA 1992), decision approved, 630 So. 2d 1067 (Fla. 1994).
- 9 [Meyers By and Through Meyers v. Scoot-a-Way Corp.](#), 662 So. 2d 411 (Fla. 3d DCA 1995) (guest at hotel injured striking face on unpadding steering wheel area of waverunner leased from hotel livery service).

- 9 Meyers By and Through Meyers v. Scoot-a-Way Corp., 662 So. 2d 411 (Fla. 3d DCA 1995).
10 Am. Jur. 2d, Premises Liability § 73.
11 Am. Jur. 2d, Premises Liability § 75.

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12 Am. Jur. 2d Boats and Boating VIII Refs.

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VIII. Liability of Municipal Corporation or Other Public Body for Boating Injuries in Park or Other Public Place

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VIII. Liability of Municipal Corporation or Other Public Body for Boating Injuries in Park or Other Public Place

§ 65. Liability of municipal corporation for boating injuries in public area, generally

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Forms

Forms relating to municipal corporations, see Am. Jur. Pleading and Practice Forms, Boats and Boating [[Westlaw® Search Query](#)]

The liability of a municipal corporation or other public body for boating injuries occurring in a park or other public place, as pertains to claims for injuries against such public bodies generally, may depend upon whether, in performing the acts in question, the municipality or other public body was engaged in a governmental function so as to make it immune from tort liability, or in a proprietary function so as to subject it to liability.¹

A school and city board of education are entitled to immunity in students' estates' wrongful death action arising when the students drown after surreptitiously leaving a camp dormitory in the early morning hours to ride paddleboats on a nearby river, where the school's and board's authority to supervise students, although including the right and obligation to deny river access to students, does not constitute general supervisory authority over the river itself, within the meaning of a local government tort immunity statute extending immunity to waterways not owned, supervised, or controlled by such local government entity.²

The term “boating” in a statute providing governmental immunity for hazardous recreational activity is designed to cover many types of craft, including canoes.³ Although the specific terms “kayaking” and “white water rafting” appear in the statute, the purpose of listing the more specific hazardous recreational activities is not to limit the interpretation of the more general

activities, but to lend weight in litigation to a public entity's defense.⁴ Fishing from a canoe tethered near the shore of a public waterway that is also used by powerboats is “boating” under a statute providing governmental immunity for hazardous recreational activities such as boating; a canoe is clearly a boat, the term “boating” is not limited to boats that are traveling, and falling from a stationary canoe is objectively foreseeable.⁵

The state, a county, and a city has no duty to warn canoers, who die as a result of a motorboat striking them while fishing from their canoe, as would permit a finding of liability under the failure to warn exception to a statute providing governmental immunity for hazardous recreational activity.⁶

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Footnotes

- 1 [Wood v. County of San Joaquin](#), 111 Cal. App. 4th 960, 4 Cal. Rptr. 3d 340 (3d Dist. 2003), as modified, (Sept. 5, 2003).
As to liability of municipality for injuries in water-related facilities, generally, see [Am. Jur. 2d, Parks, Squares, and Playgrounds](#) § 37.
As to liability of municipality operating boat livery for injuries to persons renting boats, see §§ [63](#), [65](#).
- 2 [Choice v. YMCA of McHenry County](#), 2012 IL App (1st) 102877, 364 Ill. Dec. 306, 976 N.E.2d 584, 285 Ed. Law Rep. 528 (App. Ct. 1st Dist. 2012).
- 3 [Wood v. County of San Joaquin](#), 111 Cal. App. 4th 960, 4 Cal. Rptr. 3d 340 (3d Dist. 2003), as modified, (Sept. 5, 2003).
- 4 [Wood v. County of San Joaquin](#), 111 Cal. App. 4th 960, 4 Cal. Rptr. 3d 340 (3d Dist. 2003), as modified, (Sept. 5, 2003).
- 5 [Wood v. County of San Joaquin](#), 111 Cal. App. 4th 960, 4 Cal. Rptr. 3d 340 (3d Dist. 2003), as modified, (Sept. 5, 2003).
- 6 [Wood v. County of San Joaquin](#), 111 Cal. App. 4th 960, 4 Cal. Rptr. 3d 340 (3d Dist. 2003), as modified, (Sept. 5, 2003).

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IX. Liability of Manufacturer or Seller Based on Defective Condition of Boat or of Its Supplies, Parts, or Equipment

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IX. Liability of Manufacturer or Seller Based on Defective Condition of Boat or of Its Supplies, Parts, or Equipment

§ 66. Liability of manufacturer or seller for defective condition of boat or supplies, generally

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[Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Adequacy of Warning Provided to User of Sporting Equipment](#), 34 A.L.R.7th Art. 3 (Boats and personal watercraft)

[Products Liability: sufficiency of evidence to support product misuse defense in actions concerning automobiles, boats, aircraft, and other vehicles](#), 63 A.L.R.4th 18 (secs. 3, 4, 5, 6, 7, 8(a), 8(b), 9, 10, 12(b), 13(a), 13(b), 14(a), 14(b), 15, 16(a), 19(a), 19(b), 20(a), 23, 24, 25, 26(a), 26(b), 28(a), 28(b), 28(c), 28(d), 28(e), 30, 31(a), 31(b), 31(c), 32, 33, 34, 35, 36, 37(a), 37(b), 37(c), 37(d), 38(a), 38(b) superseded in part by [Products Liability: Sufficiency of Evidence to Support Product Misuse Defense in Actions Concerning Automobiles and Other Motor Vehicles](#), 18 A.L.R.7th Art. 4)

[Products liability: liability of manufacturer or seller for injury or death caused by defect in boat or its parts, supplies, or equipment](#), 1 A.L.R.4th 411

[Products liability claim as within admiralty jurisdiction](#), 7 A.L.R. Fed. 502

Trial Strategy

[Motorboat Propeller Injury Accidents](#), 41 Am. Jur. Trials 161

[Motorboat Accident Litigation](#), 7 Am. Jur. Trials 1

Forms

Forms relating to manufacturers; breach of warranty, see Am. Jur. Pleading and Practice Forms, Boats and Boating [[Westlaw® Search Query](#)]

Under federal maritime law, a plaintiff is permitted to sue the manufacturer for the full amount of damages, even though the operator's negligence might have contributed to the plaintiff's injuries.¹

Liability has been imposed, in various particular circumstances, on the manufacturer or seller of a boat or its parts, supplies, or equipment for injuries or damages which were caused by a fuel leak or other fire-producing defect in the product of the manufacturer or seller.² Likewise, liability has been imposed on the manufacturer of a boat for injuries or damages, where the injuries or damages were caused by a defect in the boat's steering or starting controls,³ and liability has been imposed on the manufacturer or seller of a boat for injuries or damages, where the injuries or damages were caused by a defect in the boat, other than a defect in the boat's controls or a fire-producing defect.⁴

Practice Tip:

A products liability claimant, alleging that automatic fire-suppression system was unreasonably dangerous in construction or composition, must demonstrate not only manufacturer's specifications or performance standards for particular product, but also how product materially deviated from those standards so as to render it unreasonably dangerous.⁵

In other factual settings, however, there was no liability for injuries or damages which were caused by fire,⁶ a defect in the boat's steering system,⁷ a defect in the boat's seat,⁸ the fact that a motorboat had not been equipped with a propeller guard,⁹ and other alleged defects.¹⁰

Even if a personal watercraft is defectively designed, the watercraft's manufacturers are not liable in watercraft user's action for products liability based on the theory of design defects, where the watercraft's warnings are legally adequate.¹¹ However, it has also been held that a jury's finding that the personal watercraft manufacturer's failure to provide a warning to passengers not to ride the watercraft without protective clothing, similar to the warning located on the console where it was visible to the driver but not to the passenger, was a substantial factor in causing passengers' harm from accident, was supported by substantial evidence.¹²

Practice Tip:

The United States Coast Guard Navigation and Vessel Inspection Circular regarding human factors engineering application to design, construction, overhaul, and maintenance of vessels, was applicable only to commercial vessels, not recreational vessels, and thus the circular is inadmissible in a boat operator's consumer products liability action against the manufacturer of a fishing boat's outboard engine, in which the operator sought recovery for injuries caused by the engine's propellers.¹³

CUMULATIVE SUPPLEMENT

Cases:

There was no non-speculative testimony or record evidence indicating that there was a defect in the boat or that the alleged defect proximately caused buyer's injuries when boat that buyer purchased capsized after battery died while sailing in the ocean, precluding recovery in favor of buyer on breach of warranty claim under South Carolina law and negligence and strict liability claims under admiralty law. [Judy v. Mako Marine International, Inc.](#), 422 F. Supp. 3d 1062 (D.S.C. 2019).

Undocumented alien who was struck and killed by Coast Guard vessel while swimming at night across ship channel to enter United States from Mexico undetected was not ultimate user or consumer of vessel, as required for her surviving spouse to bring product liability claims relating to design and sale of vessel, alleging that vessel was defective because of forward visibility obstructions when it came up on to plane and lack of propeller guard, and that vessel and engine manufacturers had duty to warn United States about those alleged defects. [Restatement \(Second\) of Torts, § 402A. Ortega Garcia v. United States](#), 427 F. Supp. 3d 882 (S.D. Tex. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Sands v. Kawasaki Motors Corp. U.S.A.](#), 513 Fed. Appx. 847 (11th Cir. 2013).
As to comparative negligence and assumption of the risk in recreational boating cases, see §§ 54 to 60.
- 2 [Moron v. Bertram Yacht Sales, Inc.](#), 458 F.2d 500 (5th Cir. 1972); [Peltier v. Seabird Industries, Inc.](#), 304 So. 2d 695 (La. Ct. App. 3d Cir. 1974), writ denied, 309 So. 2d 343 (La. 1975); [Schedlbauer v. Chris-Craft Corp.](#), 381 Mich. 217, 160 N.W.2d 889 (1968).
As to liability of manufacturers and sellers for injuries from defect in or condition of article sold, generally, see [Am. Jur. 2d, Products Liability](#) §§ 1 et seq.
- 3 [Seal Offshore, Inc. v. American Standard, Inc.](#), 736 F.2d 1078 (5th Cir. 1984); [Warren v. Shelter Mutual Insurance Company](#), 233 So. 3d 568 (La. 2017) (pointing out that manufacturer of hydraulic steering system chose not to provide warnings of any potential personal injury hazards on product itself in order to avoid "mass hysteria").

- 4 [Anderson v. Whittaker Corp.](#), 894 F.2d 804, 29 Fed. R. Evid. Serv. 1033 (6th Cir. 1990); [Miller Industries v. Caterpillar Tractor Co.](#), 733 F.2d 813, 39 U.C.C. Rep. Serv. 84, 81 A.L.R. Fed. 163 (11th Cir. 1984) (abrogated by, [East River S.S. Corp. v. Transamerica Delaval, Inc.](#), 476 U.S. 858, 106 S. Ct. 2295, 90 L. Ed. 2d 865, 1 U.C.C. Rep. Serv. 2d 609 (1986)); [Arthur v. Avon Inflatables Ltd.](#), 156 Cal. App. 3d 401, 203 Cal. Rptr. 1 (1st Dist. 1984); [Mulhern v. Outboard Marine Corp.](#), 146 Wis. 2d 604, 432 N.W.2d 130 (Ct. App. 1988).
Living quarters that were installed on a boat by a shipyard before the boat's sale to a buyer were not "other property" that would preclude application of the economic loss doctrine, limiting recovery to contractual remedies when a product only causes damage to itself, in a ship buyer's action against a shipyard after a crane boom cradle stanchion that the shipyard cut and rewelded snapped and damaged the living quarters, even though the boat and living quarters had separate prices; the purchase agreement combined the vessel and other components including the living quarters as the "purchased Assets." [Smith Maritime, Inc. v. L/B KAITLYN EYMARD](#), 710 F.3d 560 (5th Cir. 2013).
Under Mississippi's risk-utility test in determining whether a product is unreasonably dangerous, the openness and obviousness of a product's design, relied upon in granting summary judgment, is simply a factor to consider in determining whether a product was unreasonably dangerous, not a complete bar to recovery. [Seymour v. Brunswick Corp.](#), 655 So. 2d 892 (Miss. 1995).
- 5 [Sudderth v. Mariner Elec. Co., Inc.](#), 193 So. 3d 552 (La. Ct. App. 5th Cir. 2016) (applying Louisiana law).
- 6 [Sisson v. Hatteras Yachts, Inc.](#), 778 F. Supp. 959 (N.D. Ill. 1991); [Wolff v. Whittaker Marine & Mfg. Co., Inc.](#), 484 F. Supp. 1021 (E.D. Mo. 1979).
Having a passenger manually hold a leaking fuel rail in place on a high-performance speed boat was a method of using the fuel rail that was not intended or reasonably anticipated by the manufacturer, and thus the misuse of the product served as a complete defense to products liability claim of passenger killed when fuel leaking from the fuel rail ignited. Moreover, the causation was broken when the defect was observed and completely, but temporarily, neutralized twice by effected repairs. [Korban v. Boostpower U.S.A., Inc.](#), 533 Fed. Appx. 820 (10th Cir. 2013) (applying Oklahoma law).
- 7 [Breedon v. Valencia, Inc.](#), 557 So. 2d 302 (La. Ct. App. 4th Cir. 1990), writ denied, 558 So. 2d 607 (La. 1990) (plaintiff failed to establish that steering mechanism of jet ski was unreasonably dangerous and constituted defect); [Fitzgerald Marine Sales v. LeUnes](#), 659 S.W.2d 917 (Tex. App. Fort Worth 1983), dismissed, (Feb. 29, 1984).
Evidence that rod end in boat's steering mechanism was corroded and failed, standing alone, did not establish that it was defectively designed, precluding boat passenger's design defect claim, against manufacturer of steering mechanism, arising from injuries passenger sustained when he was ejected from boat after rod broke while boat was in motion. [Santos-Rodriguez v. Seastar Solutions](#), 858 F.3d 695 (1st Cir. 2017) (applying Puerto Rico law).
- 8 [Barringer v. Wal-Mart Stores, Inc.](#), 699 F. Supp. 1496 (N.D. Okla. 1988) (applying Oklahoma law); [Norman v. Fisher Marine, Inc.](#), 672 S.W.2d 414, 63 A.L.R.4th 1 (Tenn. Ct. App. 1984).
- 9 [Pree v. Brunswick Corp.](#), 983 F.2d 863 (8th Cir. 1993); [Allen v. Minnstar, Inc.](#), 8 F.3d 1470, 27 Fed. R. Serv. 3d 36 (10th Cir. 1993) (applying Utah law).
Coast Guard's decision not to adopt regulation requiring propeller guards on motorboats, because the available data did not meet stringent criteria of Federal Boat Safety Act (FBSA) for federal regulation, did not preempt common-law tort claims arising out of failure to install guards on motorboats; although the Coast Guard's decision not to require propeller guards was intentional and carefully considered, it did not convey "authoritative" message of federal policy against propeller guards, so as to preempt state laws regulating such guards. [Sprietsma v. Mercury Marine, a Div. of Brunswick Corp.](#), 537 U.S. 51, 123 S. Ct. 518, 154 L. Ed. 2d 466 (2002).
- 10 As to preemption of state boating laws, see § 6.
[Wyke v. Sea Nymph, Inc.](#), 758 F. Supp. 418 (W.D. Ky. 1990) (applying Kentucky law); [Hebert v. Outboard Marine Corp.](#), 638 F. Supp. 1166 (E.D. La. 1986) (applying Louisiana law; action against manufacturer of outboard motor for injuries sustained when the boat struck an underwater obstruction and the cover on the motor flew off, the motor was propelled into the boat, and an exposed fly wheel came into contact with the plaintiff's arm).

Manufacturer of recreational water vehicle known as Aqua-Cycle was not liable to body surfer injured when he was struck by Aqua-Cycle for failure to warn users to exercise caution around swimmers and to avoid strong current, wind, or waves, as manufacturer had no duty to warn of obvious danger and because lack of warning did not proximately cause body surfer's injuries; uncontroverted evidence, including testimony of plaintiff himself, showed that users of Aqua-Cycle would be aware as matter of common sense that they should be careful around swimmers. [Dema v. Shore Enterprises, Ltd.](#), 312 S.C. 528, 435 S.E.2d 875 (Ct. App. 1993).

11 [Hickerson v. Yamaha Motor Corporation](#), 882 F.3d 476 (4th Cir. 2018), cert. denied, 139 S. Ct. 105, 202 L. Ed. 2d 30 (2018) (applying South Carolina law to a case where the plaintiff fell off the back of a personal watercraft and suffered "orifice" injuries).

12 [Colombo v. BRP US Inc.](#), 230 Cal. App. 4th 1442, 179 Cal. Rptr. 3d 580 (4th Dist. 2014) (applying California law).

13 [McGarrigle v. Mercury Marine](#), 838 F. Supp. 2d 282, 87 Fed. R. Evid. Serv. 229 (D.N.J. 2011).

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12 Am. Jur. 2d Boats and Boating X Refs.

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Boats and Boating

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X. Liability of Bailee for Damage to or Loss of Boat During Bailment

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A.L.R. Index, Pleasure Boats

A.L.R. Index, Yachts

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12 Am. Jur. 2d Boats and Boating § 67

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Boats and Boating
Sonja Larsen, J.D.

X. Liability of Bailee for Damage to or Loss of Boat During Bailment

§ 67. Liability of bailee for damage to or loss of boat during bailment, generally

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West's Key Number Digest

West's Key Number Digest, [Bailment](#) 2, 9, 14(1)

West's Key Number Digest, [Wharves](#) 20(1)

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[Liability of operator of marina or boatyard for loss of or injury to pleasure boat left for storage or repair, 44 A.L.R.3d 1332](#)

[Bailee's duty to insure bailed property, 28 A.L.R.3d 513](#)

Trial Strategy

[Bailee's Liability for Damage, Loss, or Theft of Bailed Property, 46 Am. Jur. Proof of Facts 3d 361](#)

The law of bailment applies in suits for damages to a boat that was turned over to be repaired¹ or for storage.² Thus, while the bailee of a pleasure boat left for repairs is not an insurer of the boat,³ the bailee does owe a duty to exercise ordinary care in the protection of the boat where the bailment is for the mutual benefit of the parties.⁴

Observation:

After the termination of a bailment, the bailee's duty to protect a ship changes dramatically. Its only duty in admiralty is not to damage the boat willfully or through gross negligence.⁵

A yacht club does not have exclusive right to possession of its club members' boats, and therefore no bailment relationship is created where the members have free access to their boats at any time while storing them at the club.⁶

Practice Tip:

An oral contract for the storage of the owner's boat does not violate the statute of frauds.⁷

One who rented an outboard motorboat from a boat livery operator has been charged with the duty owed by a bailee for hire to a bailor of exercising ordinary or due care in the use of the bailor's property, the amount of care required to constitute ordinary care being commensurate with the danger involved so that under circumstances of peculiar peril a greater amount of care is required than where the circumstances are less perilous.⁸ The rule that where the bailment is for the sole benefit of the bailee, the bailee must exercise extraordinary care and is liable for slight neglect, has been recognized to apply where a boat dealer loaned a former (but also prospective) customer a cabin cruiser for a weekend trip and the boat was destroyed by fire on the trip.⁹

The nonjudicial sale of a bailed boat to satisfy repair charges does not preclude the owner from bringing an action against a boatyard for breach of duty as a bailee for allowing the boat to sink while in the boatyard's possession.¹⁰

Although a bailee had completed all repairs which it had originally contracted to perform on a cruiser and the boat was kept in the bailee's boathouse without a rental fee as an accommodation to the bailor while awaiting additional work by a third party, nevertheless a mutual bailment for hire exists where the bailee was to assist in such additional work and was to derive some financial gain from it.¹¹

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Footnotes

- 1 [Hudson River Cruises, Inc. v. Bridgeport Drydock Corp.](#), 892 F. Supp. 380 (D. Conn. 1994); [Stovall Tire & Marine, Inc. v. Fowler](#), 135 Ga. App. 26, 217 S.E.2d 367 (1975).

A "bailment for mutual benefit" arises where, among other circumstances, the bailor hires the bailee to "store" or "do some work upon the property," including in contracts for the repair of ships. [National Union Fire Insurance Company of Pittsburgh, PA. v. Garpo Marine Services, Inc.](#), 773 Fed. Appx. 22 (2d Cir. 2019). [Empire Tool Co. v. Wells](#), 227 So. 2d 76, 44 A.L.R.3d 1327 (Fla. 4th DCA 1969).

The complaint stated a cause of action where the plaintiff alleged the existence of a valid contract whereby he paid the defendant \$100 per month to store his boat and keep it free from damage or theft; alleged a material breach of the contract by allowing the boat to be stolen; and alleged damages measured by the lost value of the boat's original condition minus the amount recovered when he sold the hull before filing suit.

[Terzis v. Pompano Paint and Body Repair, Inc.](#), 127 So. 3d 592 (Fla. 4th DCA 2012).

[Niagra Fire Ins. Co. v. Dog River Boat Service, Inc.](#), 187 F. Supp. 528 (S.D. Ala. 1960).

[National Union Fire Insurance Company of Pittsburgh, PA. v. Garpo Marine Services, Inc.](#), 2019 WL 2061930 (2d Cir. 2019); [Pennington v. Styron](#), 270 N.C. 80, 153 S.E.2d 776 (1967).

[Norfolk Shipbuilding & Drydock Corp. v. M/V Harry W. Adams](#), 537 F.2d 1222 (4th Cir. 1976).

[In re Complaint of Martin](#), 596 F. Supp. 2d 142 (D. Mass. 2009), *aff'd*, 388 Fed. Appx. 6 (1st Cir. 2010).

[Terzis v. Pompano Paint and Body Repair, Inc.](#), 127 So. 3d 592 (Fla. 4th DCA 2012) (owner paid company \$100 per month to store his boat and to keep it free from damage or theft).

[Keagle v. Ufford](#), 61 Ohio L. Abs. 3, 103 N.E.2d 20 (Mun. Ct. 1950).

[Barret v. Ivison](#), 248 Ky. 243, 57 S.W.2d 1005 (1933).

[Boyd v. Panama City Boat Yard, Inc.](#), 522 So. 2d 1058 (Fla. 1st DCA 1988).

[Niagra Fire Ins. Co. v. Dog River Boat Service, Inc.](#), 187 F. Supp. 528 (S.D. Ala. 1960).

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12 Am. Jur. 2d Boats and Boating § 68

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Boats and Boating

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X. Liability of Bailee for Damage to or Loss of Boat During Bailment

§ 68. Presumptions and burden of proof in tort action based on bailment of boat

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West's Key Number Digest

West's Key Number Digest, [Bailment](#) 31(1)

West's Key Number Digest, [Wharves](#) 20(7)

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[Presumption and burden of proof where subject of bailment is destroyed or damaged by windstorm or other meteorological phenomena](#), 43 A.L.R.3d 607

[Presumption and burden of proof in action for injury to or loss of ship or vessel during bailment or charter](#), 65 A.L.R.2d 1228

The general rules of bailment, as to presumptions and burden of proof in actions by a bailor against a bailee based on negligence for damage to, or loss of, the bailed item, by fire, theft, storm or some other accident apparently beyond the bailee's control¹ have been applied in actions for damage to, or loss of, pleasure yachts or boats during a bailment. For example, by establishing that the owner's motor boat was delivered to a marina in good condition and returned in damaged condition, the owner sets forth a prima facie case of negligence² and it becomes incumbent upon the marina operator to come forward with evidence to explain what happened to the boat, in the owner's action against the operator for breach of the bailment agreement,³ although this does not shift the burden of proof to the bailee.⁴ However, the question of the burden of proof may depend upon the pleadings, as where the bailor of a cabin cruiser who pleaded against the bailee that the boat and its contents were totally destroyed by fire by reason of the bailee's gross negligence had the burden of proving negligence without the benefit of the rule that a prima facie case is made out by delivery in good condition and failure to return, thereby putting the burden on the bailee.⁵ Where the bailor of a boat in an action against the bailee to recover for the loss of the boat during a storm alleges that the bailee negligently lost the boat, the burden of proving negligence rests on the bailor, where the bailee's evidence fails to show any negligence on his or her part.⁶

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Footnotes

- 1 [Am. Jur. 2d, Bailments §§ 231 to 234.](#)
- 2 [National Union Fire Insurance Company of Pittsburgh, PA. v. Garpo Marine Services, Inc., 773 Fed. Appx. 22 \(2d Cir. 2019\).](#)
- 3 [Tweedy v. Bonnie Castle Yacht Basin, Inc., 73 A.D.3d 1455, 905 N.Y.S.2d 727 \(4th Dep't 2010\)](#) (the owner was entitled to recover from the operator of the marina, which returned the boat in a damaged condition, where the operator offered no evidence concerning the condition of the boat at the time of delivery, and it was undisputed that the operator did not inspect and inventory the boat at the time of delivery). A bailor has the burden of proving negligence and that when he or she shows delivery of the boat in good condition and a failure to return it, or its return in a damaged condition, the bailor established a prima facie case of negligence, and it then becomes the duty of the bailee to go forward with explanatory evidence to rebut the presumption. [Hudson River Cruises, Inc. v. Bridgeport Drydock Corp., 892 F. Supp. 380 \(D. Conn. 1994\).](#)
- 4 [Niagra Fire Ins. Co. v. Dog River Boat Service, Inc., 187 F. Supp. 528 \(S.D. Ala. 1960\); Chanler v. Wayfarer Marine Corp., 302 F. Supp. 282 \(D. Me. 1969\).](#)
- 5 [Barret v. Ivison, 248 Ky. 243, 57 S.W.2d 1005 \(1933\).](#)
Owner/operator of boat-mooring facilities was not liable for destruction of cabin cruiser by fire where boat owner offered no evidence of negligence on part of operator of facilities and had relieved operator from presumption of negligence inasmuch as pleadings reflected that property was destroyed by fire, which was consistent with exercise of ordinary care by operator of facilities, operator's prima facie case of due care being established by such explanation of injury. [Blair v. Saguaro Lake Development Co., 17 Ariz. App. 72, 495 P.2d 512 \(Div. 1 1972\).](#)
- 6 [Bock v. Eilen, 211 S.W.2d 92 \(Mo. Ct. App. 1948\).](#)

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X. Liability of Bailee for Damage to or Loss of Boat During Bailment

§ 69. Liability for loss or damage to boat subject to bailment under particular circumstances

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[Liability of operator of marina or boatyard for loss of or injury to pleasure boat left for storage or repair, 44 A.L.R.3d 1332](#)

[Presumption and burden of proof where subject of bailment is destroyed or damaged by fire, 44 A.L.R.3d 171](#)

[Presumption and burden of proof where subject of bailment is destroyed or damaged by windstorm or other meteorological phenomena, 43 A.L.R.3d 607](#)

[Sufficiency of warehouseman's precautions to protect goods against fire, 42 A.L.R.3d 908](#)

Under the rules as to presumptions and burden of proof,¹ liability has been imposed, in various particular circumstances, on the operator of a marina or boatyard for loss of or damage to a pleasure boat left for storage or repairs, where the loss or damage resulted from fire,² theft or disappearance,³ storm,⁴ sinking,⁵ fall,⁶ or unknown causes.⁷ In other factual settings, however, no liability may be found for loss or damage to a pleasure boat resulting from fire,⁸ storm,⁹ theft,¹⁰ sinking,¹¹ or collision.¹²

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Footnotes

¹ § 68.

² [Fireman's Fund Am. Ins. Co. v. Captain Fowler's Marina, Inc.](#), 343 F. Supp. 347, 11 U.C.C. Rep. Serv. 180 (D. Mass. 1971); [Aetna Life & Cas. Co. v. Stan-Craft Corp.](#), 159 Mont. 474, 499 P.2d 776 (1972).

Where the purchaser of a boat returned it to the dealer for repair of problems covered by the manufacturer's warranty, and the dealer returned boat to manufacturer in Missouri and, after repairs, dealer took possession of boat for its return trip to Ohio but, during return, it was destroyed by fire of unknown origin, dealer was liable to purchaser for loss of boat. [Hershey v. Happy Days Boating Co.](#), 52 Ohio App. 2d 95, 6 Ohio Op. 3d 64, 368 N.E.2d 318 (6th Dist. Sandusky County 1976).

3 [Marine Office-Appleton & Cox Corp. v. Aqua Dynamics, Inc.](#), 295 So. 2d 370 (Fla. 3d DCA 1974); [Grabbert v. Marina Parks, Inc.](#), 101 R.I. 164, 221 A.2d 455 (1966).

Defendant marina would be liable for loss of plaintiff's boat unless, on remand, it established due and reasonable care of boat on night it disappeared. [Pope v. Andrews](#), 361 So. 2d 71 (Miss. 1978).

4 [National Union Fire Insurance Company of Pittsburgh, PA. v. Garpo Marine Services, Inc.](#), 773 Fed. Appx. 22 (2d Cir. 2019); [Pennington v. Styron](#), 270 N.C. 80, 153 S.E.2d 776 (1967).

5 [Stovall Tire & Marine, Inc. v. Fowler](#), 135 Ga. App. 26, 217 S.E.2d 367 (1975).

When the owner of a yacht establishes by evidence that the delivery was in good condition to the bailee defendant to be repaired, and showed that it was damaged while in the bailee's care, he was entitled to have his claim for damages submitted to the jury, and entitled to a judgment, unless the bailee offered evidence in explanation of the default by showing facts and circumstances sufficient to exonerate it from liability. [Hamm v. F. B. Walker & Sons, Inc.](#), 198 So. 2d 817 (Miss. 1967),

6 [Johnson's Branford Boat Yard, Inc. v. Yacht Altair](#), 260 F. Supp. 841 (D. Conn. 1966).

7 [Vece v. Vanacore](#), 2 Conn. Cir. Ct. 325, 198 A.2d 728 (App. Div. 1963).

8 [In re Complaint of Martin](#), 596 F. Supp. 2d 142 (D. Mass. 2009), *aff'd*, 388 Fed. Appx. 6 (1st Cir. 2010) (no bailment where yacht club did not have exclusive possession of yacht); [Blair v. Saguaro Lake Development Co.](#), 17 Ariz. App. 72, 495 P.2d 512 (Div. 1 1972).

9 [Buntin v. Fletchas](#), 257 F.2d 512 (5th Cir. 1958); [Chanler v. Wayfarer Marine Corp.](#), 302 F. Supp. 282 (D. Me. 1969).

10 [Vasche v. Habersham Marina](#), 209 Ga. App. 263, 433 S.E.2d 671 (1993).

11 [Sprague v. Snug Harbor Marina, Inc.](#), 13 Wash. App. 246, 534 P.2d 583 (Div. 1 1975) (evidence indicated that unseaworthiness of boat and not negligence of marina employee caused boat to fill with water and capsize). Bailee of yacht did not act negligently in performance of duties and did not proximately cause damages when yacht sank, where agent for bailor worked on boat every day and was last one to work on boat before it sank, where yacht was found sunk about three hours after bailor inspected it, and where, even if bailee was negligent in failing to provide 24 hour security for premises, bailor failed to prove that more likely than not vandalism caused sinking or that 24 hour watchman could have prevented sinking. [Goudy & Stevens, Inc. v. Cable Marine, Inc.](#), 924 F.2d 16 (1st Cir. 1991).

12 [Schroeder v. Tug Montauk](#), 358 F.2d 485 (2d Cir. 1966); [Sisung v. Tiger Pass Shipyard Co.](#), 303 F.2d 318 (5th Cir. 1962).

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XI. Criminal Liability for Boating While Intoxicated

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XI. Criminal Liability for Boating While Intoxicated

§ 70. Criminal liability for boating while intoxicated, generally

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[Validity, Construction, and Application of Statutes Prohibiting Boating While Intoxicated, Boating While Under the Influence, or the Like, 47 A.L.R.6th 107](#)

Trial Strategy

[Proof and Disproof of Alcohol Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459](#)

[Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439](#)

[Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229](#)

Forms

Forms relating to alcohol and boating while intoxicated, see Am. Jur. Legal Forms 2d, Boats and Boating; Am. Jur. Pleading and Practice Forms, Boats and Boating [[Westlaw® Search Query](#)]

Under the laws in some states, in order to obtain a conviction for driving a boat while under the influence the state must prove that the defendant had an impaired driving ability as a result of drinking alcohol.¹

Where a lake in which a boat operator was arrested for boating under the influence is within the boundaries of the state and was open to the public, the offense has occurred within state waters, even though the federal government owns the lake.²

Statutes that prohibit an individual from operating a boat while under the influence of alcohol and define “the operation of a boat” to purportedly include status as a passenger are not facially unconstitutional, as the statutes are not impermissibly vague since they prohibit the use and navigation of the boat, and the statute did not reach constitutionally protected activities.³

A raft in which the defendant was floating is deemed a “boat” within the meaning of a boating under the influence statute, where a law enforcement officer’s testimony describes a raft that could be used for transportation on the water, and it is approximately five feet in length when inflated and oblong with sides and a bottom, designed for one or two people, and the fact that the raft does not require a registration number does not remove it from the statutory definition.⁴

A defendant’s intoxication need only be “a” cause of the victim’s drowning death after a boat capsizes, and not the “sole” cause, in order to support a charge for boating while intoxicated resulting in death.⁵

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Footnotes

- 1 [Bowling v. State](#), 275 Ga. App. 45, 619 S.E.2d 688 (2005) (so-called “less safe driver” statutes).
The testimony of a law enforcement officer that defendant was operating boat before switching places behind steering wheel with another male, that defendant’s face was “flushed and slack,” his speech was slurred, his eyes were bloodshot, his breath was of odor of alcoholic beverage, and that he failed both field sobriety and breath tests, supported finding that defendant was boating under the influence of alcohol. [Buckalew v. State](#), 249 Ga. App. 134, 547 S.E.2d 355 (2001).
Injured swimmer was not entitled to award of punitive damages in action against powerboat owner who had consumed alcohol out on boat, in light of owner’s and driver’s testimony that they had consumed only minimal amount, which testimony was corroborated by other witnesses. [Tillman ex rel. Miguez v. Singletary](#), 865 So. 2d 350 (Miss. 2003).
- 2 [Buckalew v. State](#), 249 Ga. App. 134, 547 S.E.2d 355 (2001).
- 3 [State v. Andrews](#), 2007 SD 29, 730 N.W.2d 416 (S.D. 2007).
- 4 [State v. Lambert](#), 227 Or. App. 614, 206 P.3d 1065 (2009).
There is no necessity for the state to prove that the boat used by the defendant while intoxicated is subject to a license tax in order to establish boating while intoxicated, even though the statute defines a “vessel” as being synonymous with a boat as referenced in a constitutional provision in an article dealing solely with finance and taxation matters, where the boating under the influence statute did not define the word “vessel” as a boat which subject to a license tax, and the fact that the legislature separated registration requirements from boating safety issues indicated that the legislature did not intend for boat’s registration status to dictate whether its operator could be charged with BUI. [State v. Davis](#), 110 So. 3d 27 (Fla. 2d DCA 2013).
- 5 [State v. Martin](#), 182 Vt. 377, 2007 VT 96, 944 A.2d 867, 47 A.L.R.6th 591 (2007).

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XI. Criminal Liability for Boating While Intoxicated

§ 71. Investigation of offense of boating while intoxicated

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A defendant's failure to yield to a deputy's patrol boat, by itself, is insufficient to constitute probable cause to arrest for boating while intoxicated.¹ However, after observing a defendant's operation of a boat, observing the defendant's poststop conduct, smelling alcohol, hearing the defendant's admission to drinking, and conducting field sobriety tests that the defendant fails, a deputy may have probable cause to arrest the defendant.²

In some jurisdictions, a statute prohibiting boating while impaired contains an "implied consent" provision, that permits a blood test at a medical facility at the direction of a law enforcement officer, which means that any person arrested for a violation of the statute does not have a constitutional right to refuse to submit to a blood test. Instead, the basis on which to evaluate consent to undergo a chemical test is conferred by statute, and valid consent only requires a "verbal agreement to undergo, lack of objection to, or cooperation in the performance of, the blood testing."³ In other jurisdictions, an officer has no legal authority to require an arrestee for boating under the influence to submit to a blood or breath test under a statute providing that an officer "may request" such a person to submit to chemical testing of his or her blood, breath, or urine for purposes of determining the drug or alcoholic content of the blood.⁴ On the other hand, it has also been held that warrantless blood-alcohol breath tests of a driver of a boat by a law enforcement officer after the driver is arrested for operating a vessel while under the influence of alcohol or drugs constitutes a lawful search incident to arrest, and thus does not violate the Fourth Amendment where the breath tests do not implicate significant privacy concerns and involve a negligible intrusion, do not increase embarrassment inherent in arrest, and the driver has a diminished expectation of privacy while under arrest.⁵

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Footnotes

¹ [State v. Hussong, 739 N.W.2d 922 \(Minn. Ct. App. 2007\).](#)

² [State v. Hussong, 739 N.W.2d 922 \(Minn. Ct. App. 2007\).](#)

- 3 [Com. v. Thompson](#), 87 Mass. App. Ct. 572, 32 N.E.3d 1273 (2015).
- 4 [People v. Gutierrez](#), 33 Cal. App. 5th Supp. 11, 245 Cal. Rptr. 3d 143 (Cal. App. Dep't Super. Ct. 2019) (warrantless blood draw violated Fourth Amendment).
- The implied consent statute for watercraft operators requires that an arrestee unequivocally manifest assent to the testing by words or conduct before officers can conduct warrantless testing. [Brown v. McClennen](#), 239 Ariz. 521, 373 P.3d 538 (2016).
- The fact that an individual arrested on suspicion of boating while intoxicated who refuses to consent to warrantless chemical testing faces the loss of the right to boat on state waterways weighs against finding that consent was voluntary and uncoerced, and thus supports the determination that the search was not justified on the basis of consent under the Fourth Amendment and state constitutional prohibition against unreasonable searches and seizures; boating implicates the paramount right to use state waterways for navigational and recreational purposes. [State v. Pettijohn](#), 899 N.W.2d 1 (Iowa 2017).
- A watercraft operator's refusal to take a state-administered test, together with other evidence, can support an inference that he was an impaired driver. [Hammill v. State](#), 327 Ga. App. 580, 758 S.E.2d 336 (2014).
- 5 [People v. Arter](#), 19 Cal. App. 5th Supp. 1, 227 Cal. Rptr. 3d 183 (Cal. App. Dep't Super. Ct. 2017).

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XI. Criminal Liability for Boating While Intoxicated

§ 72. Evidentiary considerations in boating while intoxicated cases

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In order to convict a defendant of driving while intoxicated, the state must prove that the defendant was operating a vehicle, as for example a boat, and that the defendant was under the influence of alcohol or drugs.¹

The refusal to allow a defendant to conduct individual voir dire of each prospective juror regarding the issue of pretrial publicity does not impermissibly deny a fair trial or the right to statutory peremptory challenges, in a trial for boating while intoxicated resulting in death, where after the defendant exercises challenges for cause, the trial court asks the remaining group if they had heard anything that would affect their views and whether they could put that information aside and rely only on the evidence presented, and where none of the prospective jurors indicated a problem with doing so, and none of the jury questionnaire responses demonstrate that any juror had formed an opinion on the case.²

Where a state elects to adduce a boater's blood sample test results drawn by hospital personnel and given to police pursuant to a police request and which do not comply with testing procedures set forth in a statute governing the presumption of impairment, a trial court may not instruct the jury as to the statutory presumptions of impairment.³ Erroneously instructing the jury on the presumption of impairment cannot be considered fundamental error if the jury is also instructed on actual impairment but not driving with an unlawful blood- or breath-alcohol level, in a prosecution for boating under the influence.⁴

In a negligent-homicide prosecution that arises from a boating collision, the jury's rejection of a first count of negligent homicide grounded on boating under the influence does not preclude it from factoring evidence of alcohol consumption into its conclusion under a second count of negligent homicide that is based on the defendant's failing to keep a proper lookout while operating the boat.⁵ Any error in admitting a written statement made by an allegedly unavailable witness in a prosecution for boating under the influence is harmless if the statement appeared to support certain aspects of the defendant's testimony, including the defendant's argument that he or she was not operating the boat in question.⁶ A rule requiring the exclusion of remedial measures taken by a manufacturer to show a design defect does not apply in a criminal prosecution against the defendant for boating

while intoxicated resulting in death, where the manufacturer is not a party.⁷ A trial court's instruction that the defendant had a constitutional right not to testify and that the jury was not to infer guilt from the defendant's failure to testify did not violate a statute prohibiting comments that would invite negative inference from the defendant's failure to testify, in a trial for boating while intoxicated resulting in death.⁸

Where, among the defendant's other convictions is one for boating while impaired by alcohol, this conviction is not against the weight of the evidence in the presence of overwhelming proof from which a jury could validly infer that the defendant operated a boat while under the influence of alcohol, in a reckless manner than endangered others, unlawfully possessed cocaine, and left the scene of a personal injury accident involving a death and serious physical injuries without reporting it.⁹

Reasonable grounds exist for a license suspension when a person in the position of an officer, viewing the facts and circumstances as they appeared at the time, could have concluded that the individual was operating the boat while under the influence of alcohol.¹⁰

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Footnotes

- 1 [State v. Burnham](#), 213 So. 3d 470 (La. Ct. App. 5th Cir. 2017), writ denied, 240 So. 3d 184 (La. 2018), reconsideration not considered, 257 So. 3d 676 (La. 2018).
Evidence was sufficient to support the defendant's convictions for manslaughter by culpable negligence and aggravated boating under the influence of alcohol where witnesses described the defendant as impaired, and beyond his admissions, several eyewitnesses testified that the defendant's boat was speeding, and rather than slowing down, the defendant left the throttle in the wide-open position. [Hardy v. State](#), 137 So. 3d 289 (Miss. 2014).
The evidence was sufficient to prove beyond a reasonable doubt that the defendant was guilty of negligent homicide-driving under the influence of intoxicating liquor, in that the defendant's operation of a boat while under the influence of intoxicating liquor caused the victim's death. [State v. Cable](#), 168 N.H. 673, 136 A.3d 919 (2016).
- 2 [State v. Martin](#), 182 Vt. 377, 2007 VT 96, 944 A.2d 867, 47 A.L.R.6th 591 (2007).
- 3 [Cameron v. State](#), 804 So. 2d 338 (Fla. 4th DCA 2001).
- 4 [Cardenas v. State](#), 867 So. 2d 384 (Fla. 2004).
- 5 [State v. Littlefield](#), 152 N.H. 331, 876 A.2d 712 (2005).
- 6 [Buckalew v. State](#), 249 Ga. App. 134, 547 S.E.2d 355 (2001).
- 7 [State v. Martin](#), 182 Vt. 377, 2007 VT 96, 944 A.2d 867, 47 A.L.R.6th 591 (2007).
- 8 [State v. Martin](#), 182 Vt. 377, 2007 VT 96, 944 A.2d 867, 47 A.L.R.6th 591 (2007).
- 9 [People v. West](#), 166 A.D.3d 1080, 87 N.Y.S.3d 690 (3d Dep't 2018), leave to appeal denied, 32 N.Y.3d 1129, 93 N.Y.S.3d 268, 117 N.E.3d 827 (2018).
- 10 [Heffner v. Pennsylvania Fish and Boat Com'n](#), 901 A.2d 578 (Pa. Commw. Ct. 2006) (applying the state's implied consent law).

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Boats and Boating

Sonja Larsen, J.D.

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